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13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 DAVID LUCAS, DEBORAH
18 BENNETT, MARCHAE WINSTON,
19 STEFANI POBLETE TAYLOR, LELA
20 TERREL STRONG, PAIGE HELSEL,
21 RACHEL DUFFIN, KRISTINA
22 MCKNIGHT, GLENN HELMLY,
23 NOLAN GLENNON, DERRICK
24 BECKWITH, GLENN LATIMER,
25 REGINA WILSON, MARTHA
26 HARDWELL, JILL FISHER, LAURA
27 ROBERTS, KASEY WEINFURTER,
28 MOLLY O'CONNOR, CONNIE
KESNER, ANNETTE DOUGLAS,
JACQUELYNNE SUTTON, THOMAS
DEHLER, JOHN POPE, LEXII
CUMMINGS, SHEA DONAHUE,
SHANA EBERHARDT, TIFFANY
DEVONISH, CELESTE JACOBS,
BRYAN ROBERTS, BRIAN HELM,

No. 22-cv-02090

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 CAROLYN CATLOS, and MICHAEL
2 SCALISE, on behalf of themselves and
all others similarly situated,

3
4 Plaintiffs,

5 v.

6 KIA AMERICA, INC., a California
corporation,

7 and

8 HYUNDAI MOTOR AMERICA, a
9 California corporation,

10 Defendants.
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1 All allegations made in this Complaint are based upon information and belief
2 except those allegations that pertain to Plaintiffs, which are based on personal
3 knowledge. Each allegation in this Complaint either has evidentiary support or,
4 alternatively, pursuant to Federal Rule of Civil Procedure 11(b)(3) is likely to have
5 evidentiary support after a reasonable opportunity for further investigation or discovery.

6 I. NATURE OF THIS ACTION

7 1. Plaintiffs bring this proposed class action for damages and injunctive relief
8 on behalf of themselves and all other persons and entities nationwide who purchased or
9 leased 2011-2022 Kia vehicles or 2011-2022 Hyundai vehicles equipped with
10 traditional “insert-and-turn” steel key ignition systems (the “Vehicles” or “Class
11 Vehicles”) manufactured by defendant Kia America, Inc. (“Kia”) or Hyundai Motor
12 America (“Hyundai”) (collectively, “Defendants”). Unlike most vehicles, the Class
13 Vehicles are not equipped with an “immobilizer” preventing them from being started
14 unless a code is transmitted from the Vehicle’s specific smart key.

15 2. This security vulnerability (the “Defect”) makes the Vehicles incredibly
16 easy to steal, allowing thieves to steal Vehicles by simply opening the steering columns
17 and using a common USB charging cord or similar metal object to start the engine.

18 3. Viral videos on TikTok and YouTube give step-by-step instructions on
19 how to steal Class Vehicles without a key, and reports of stolen Kia and Hyundai
20 Vehicles have skyrocketed across the country. In fact, the “Kia Challenge,” widely
21 shared on social media platforms, dares people to break in and then use a USB cord to
22 start the cars. The videos show teens and young adults going for joy rides and, in some
23 cases, even abandoning or crashing the cars. The incidents have turned dangerous, with
24 suspects and bystanders being seriously injured or killed following unsafe driving and
25 crashes related to the thefts.

26 4. Defendants have long known or should have known of the Defect from
27 multiple sources. According to Police, thieves have been exploiting a security flaw in
28

1 Kia vehicles made since 2011 and Hyundai vehicles made since 2011. Yet Defendants
2 failed to disclose and actively concealed the Defect from the public, and continue to
3 manufacture, distribute, and sell the Vehicles without disclosing the Defect.

4 5. Plaintiffs bring this action for violation of relevant state consumer
5 protection acts and for breach of implied warranties on behalf of a nationwide class and
6 state classes of Vehicle lessees and owners. Plaintiffs seek damages and equitable relief
7 on behalf of themselves and all others similarly situated.

8 **II. JURISDICTION AND VENUE**

9 6. This Court has subject matter jurisdiction over this action under 28 U.S.C.
10 § 1332(d)(2), as amended by the Class Action Fairness Act of 2005, because the amount
11 in controversy exceeds \$5,000,000, exclusive of interests and costs, and because this is
12 a class action in which the members of the classes and Defendants are citizens of
13 different states. This Court also has supplemental jurisdiction over the state law claims
14 pursuant to 28 U.S.C. § 1367.

15 7. Venue is proper in this judicial district under 28 U.S.C. § 1391 because
16 Defendants are citizens of California with headquarters located in this district.

17 **III. PARTIES**

18 **A. Plaintiffs**

19 8. David Lucas is an Alabama citizen residing in Birmingham, Alabama.

20 9. Plaintiff Lucas purchased a new 2021 Kia Sportage on or about December
21 18, 2021, from Riverchase Kia in Pelham, Alabama. Plaintiff Lucas paid approximately
22 \$22,000.00 to purchase the Vehicle.

23 10. In order to start Plaintiff Lucas' Vehicle, a traditional key must be inserted
24 into the ignition.

25 11. Defendants manufactured Plaintiff Lucas' Vehicle without an immobilizer.

26 12. Because Plaintiff Lucas' Vehicle contains the Defect, Plaintiff Lucas is
27 concerned that his vehicle will be stolen.
28

1 13. Because Plaintiff Lucas' Vehicle contains the Defect, and the Defect was
2 present at the time he purchased the Vehicle but was not disclosed, Plaintiff Lucas paid
3 more for the Vehicle than he would have had Defendants disclosed the Defect prior to
4 his purchase.

5 14. Further, because Plaintiff Lucas' Vehicle contains the Defect, the resale
6 value of Plaintiff Lucas' Vehicle has been diminished because consumers now know
7 that these Vehicles are easy to steal. Accordingly, consumers will not pay what they
8 would otherwise be willing to pay if these Vehicles did not contain the Defect.

9 15. Plaintiff Lucas has suffered an ascertainable loss as a result of Defendants'
10 wrongful conduct associated with the Defect, including, but not limited to, the
11 diminished resale value of his Vehicle and the amount he overpaid for the Vehicle at
12 purchase because the Defect was not disclosed.

13 16. Deborah Bennett is an Arkansas citizen residing in North Little Rock,
14 Arkansas.

15 17. Plaintiff Bennett purchased three new Kia Soul vehicles, model years 2017,
16 2018, and 2020.

17 18. In order to start all of Plaintiff Bennett's Vehicles, a traditional key must
18 be inserted into the ignition.

19 19. Defendants manufactured Plaintiff Bennett's Vehicles without an
20 immobilizer.

21 20. Because Plaintiff Bennett's Vehicles contain the Defect, Plaintiff Bennett
22 is concerned that her Vehicle will be stolen.

23 21. Because Plaintiff Bennett's Vehicles contained the Defect, and the Defect
24 was present at the time she purchased the Vehicles but was not disclosed, Plaintiff
25 Bennett paid more for the Vehicle than she would have had Defendants disclosed the
26 Defect prior to her purchase.

1 22. Further, because Plaintiff Bennett's Vehicles contained the Defect, the
2 resale value of Plaintiff Bennett's Vehicle has been diminished because consumers now
3 know that these Vehicles are easy to steal. Accordingly, consumers will not pay what
4 they would otherwise be willing to pay if these Vehicles did not contain the Defect.

5 23. Plaintiff Bennett has suffered an ascertainable loss as a result of
6 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
7 the diminished resale value of her Vehicles, and the amount she overpaid for the
8 Vehicles at purchase because the Defect was not disclosed.

9 24. Marchae Winston is a California citizen residing in Bellflower, California.

10 25. Plaintiff Winston leased a new 2022 Kia Sportage in July 2021 from Kia
11 of Carson in Carson, California.

12 26. In order to start Plaintiff Winston's Vehicle, a traditional key must be
13 inserted into the ignition.

14 27. Defendants manufactured Plaintiff Winston's Vehicle without an
15 immobilizer.

16 28. On January 14, 2022, and again sometime between the afternoon of August
17 27, 2022, and the morning of August 29, 2022, thieves stole Plaintiff Winston's Vehicle.

18 29. In the January 2022 theft, Plaintiff Winston's Vehicle was gutted: the
19 catalytic converter and stereo were stolen, all of the ignition wiring was cut, and the
20 sideview mirrors were damaged. The Vehicle was repaired after the January theft at a
21 cost of \$10,950.83 and was returned to her in April 2022. Plaintiff Winston's Vehicle
22 has not been recovered from the August 2022 theft.

23 30. While Plaintiff Winston had insurance to cover the cost of the repairs from
24 the January theft, she was forced to pay her policy's \$1,000 deductible. Additionally,
25 she was forced to pay \$910 for rental car charges and \$305.75 for Uber charges while
26 her Vehicle was being repaired. As to the August theft, Plaintiff Winston's insurer has
27
28

1 threatened not to pay to repair the Vehicle if it is recovered because the cost of the
2 January repairs was so high, and because her Vehicle is “high risk.”

3 31. Plaintiff Winston has suffered an ascertainable loss as a result of
4 Defendants’ wrongful conduct associated with the Defect, including, but not limited to,
5 her insurance deductible, and overpayment and diminished value of the Vehicle.

6 32. Stefani Poblete Taylor is a California citizen residing in Cerritos,
7 California.

8 33. Plaintiff Poblete Taylor purchased a new 2013 Hyundai Elantra on or about
9 May 1, 2012, from Commerce Hyundai in Commerce, California. Plaintiff Poblete
10 Taylor paid approximately \$19,000.00 to purchase the Vehicle.

11 34. In order to start Plaintiff Poblete Taylor’s Vehicle, a traditional key must
12 be inserted into the ignition.

13 35. Defendants manufactured Plaintiff Poblete Taylor’s Vehicle without an
14 immobilizer.

15 36. On June 30, 2022, Plaintiff Poblete Taylor’s Vehicle was stolen from the
16 Long Beach Exchange in Long Beach, California. Plaintiff Poblete Taylor was there to
17 get lunch and was away from her Vehicle for about an hour. When she returned to where
18 the Vehicle was parked, it was gone. Plaintiff Poblete Taylor called the police and they
19 came and took a report.

20 37. Plaintiff Poblete Taylor’s Vehicle was located a week later in Compton,
21 California. Plaintiff Poblete Taylor’s Vehicle was completely stripped and everything
22 of value was gone. Even the Vehicle’s tires were gone. Plaintiff’s Poblete Taylor’s
23 Vehicle was a total loss.

24 38. Because Plaintiff Poblete Taylor’s Vehicle contains the Defect, and the
25 Defect was present at the time she purchased the Vehicle but was not disclosed, Plaintiff
26 Taylor paid more for the Vehicle than she would have had Defendants disclosed the
27 Defect prior to her purchase.

1 39. Plaintiff Poblete Taylor has suffered an ascertainable loss as a result of
2 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
3 the diminished resale value of her Vehicle, the amount she overpaid for the Vehicle at
4 purchase because the Defect was not disclosed, and the unanticipated cost of having to
5 purchase a new vehicle after the loss.

6 40. Lela Terrel Strong is a California citizen residing in West Covina,
7 California.

8 41. Plaintiff Strong purchased a used 2016 Hyundai Tucson in September 2019
9 from Russell Westbrook Hyundai of Anaheim in Anaheim, California. Plaintiff Strong
10 paid a \$3,000.00 down payment and is paying \$486.00 a month towards the vehicle.

11 42. In order to start Plaintiff Strong's Vehicle, a traditional key must be
12 inserted into the ignition.

13 43. Defendants manufactured Plaintiff Strong's Vehicle without an
14 immobilizer.

15 44. On September 7, 2022, Plaintiff Strong's Vehicle was stolen in West
16 Covina, California.

17 45. When the Vehicle was subsequently located, it was crashed and totaled.
18 All told, the Vehicle suffered a total loss.

19 46. While Plaintiff Strong's insurer will provide a check for the total loss of
20 the vehicle once the claim is processed, Plaintiff Strong has not found a replacement car
21 yet, and cannot afford a new vehicle until she receives the payment. Plaintiff Strong's
22 insurer covers \$30 per day on her rental car, but \$30 per day does not cover a comparable
23 vehicle to what Plaintiff Strong needs, so she is incurring additional daily cost for the
24 rental car. In total, Plaintiff Strong has incurred approximately \$1,000.00 for the rental
25 car. Plaintiff Strong also had to miss one day of work on the day of the theft.

26 47. Plaintiff Strong has suffered an ascertainable loss as a result of Defendants'
27 wrongful conduct associated with the Defect, including, but not limited to, her insurance
28

1 deductible, the cost of a rental car, and overpayment and diminished value of the
2 Vehicle.

3 48. Paige Helsel is a California citizen residing in Rancho Cucamonga,
4 California.

5 49. Plaintiff Helsel purchased a new 2021 Kia Forte in 2021 from Pomona Kia
6 in Pomona, California, for \$18,000.

7 50. In order to start Plaintiff Helsel's Vehicle, a traditional key must be inserted
8 into the ignition.

9 51. Defendants manufactured Plaintiff Helsel's Vehicle without an
10 immobilizer.

11 52. Because Plaintiff Helsel's Vehicle contains the Defect, Plaintiff Helsel is
12 concerned that her Vehicle will be stolen.

13 53. Because Plaintiff Helsel's Vehicle contains the Defect, and the Defect was
14 present at the time she purchased the Vehicle but was not disclosed, Plaintiff Helsel paid
15 more for the Vehicle than she would have had Defendants disclosed the Defect prior to
16 her purchase.

17 54. Further, because Plaintiff Helsel's Vehicle contains the Defect, the resale
18 value of Plaintiff Helsel's Vehicle has been diminished because consumers now know
19 that these Vehicles are easy to steal. Accordingly, consumers will not pay what they
20 would otherwise be willing to pay if these Vehicles did not contain the Defect.

21 55. Plaintiff Helsel has suffered an ascertainable loss as a result of Defendants'
22 wrongful conduct associated with the Defect, including, but not limited to, the
23 diminished resale value of her Vehicle and the amount she overpaid for the Vehicle at
24 purchase because the Defect was not disclosed.

25 56. Rachel Duffin is a Colorado citizen residing in Denver, Colorado.
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27
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1 57. Plaintiff Duffin purchased a new 2018 Hyundai Tucson in August 2021
2 from Gary Lang Kia in McHenry, Illinois. Plaintiff Duffin paid a \$2,000.00 down
3 payment and is making a monthly payment of \$311.00 towards the Vehicle.

4 58. In order to start Plaintiff Duffin's Vehicle, a traditional key must be
5 inserted into the ignition.

6 59. Defendants manufactured Plaintiff Duffin's Vehicle without an
7 immobilizer.

8 60. On September 14, 2022, Plaintiff Duffin's Vehicle was stolen in Denver,
9 Colorado.

10 61. The Vehicle has not yet been recovered by police.

11 62. While Plaintiff Duffin's insurer has covered the cost of a rental car for 30
12 days, Plaintiff Duffin had to pay a supplement of \$7 per day for the rental car. Plaintiff
13 Duffin estimates she has already paid in excess of \$200 for the rental car out of pocket.
14 In addition, Plaintiff Duffin estimates personal items in the car are valued at
15 approximately \$100, including phone chargers, jumper cables, and tools. Plaintiff
16 Duffin has also had to use Uber and Lyft services to get to work and the grocery store.

17 63. Plaintiff Duffin has suffered an ascertainable loss as a result of Defendants'
18 wrongful conduct associated with the Defect, including, but not limited to, her insurance
19 deductible, and overpayment and diminished value of the Vehicle.

20 64. Kristina McKnight is a Delaware citizen residing in Dover, Delaware.

21 65. Plaintiff McKnight purchased a used 2015 Kia Optima in February 2021
22 from Felton Holly Kia in Felton, Delaware.

23 66. In order to start Plaintiff McKnight's Vehicle, a traditional key must be
24 inserted into the ignition.

25 67. Defendants manufactured Plaintiff McKnight's Vehicle without an
26 immobilizer.

1 68. On October 1, 2022, thieves stole Plaintiff McKnight's Vehicle from
2 outside her apartment building.

3 69. When Plaintiff McKnight's Vehicle was subsequently located, it had
4 damage to its steering column and ignition as a result of the theft.

5 70. While Plaintiff McKnight has insurance, the damage to the Vehicle
6 (approximately \$1,300) is less than her \$2,000 deductible. Accordingly, Plaintiff is
7 required to pay the cost of repairs and the cost of any rental vehicle during the pendency
8 of the repairs.

9 71. Plaintiff McKnight has suffered an ascertainable loss as a result of
10 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
11 lost wages, the cost of the repairs, and overpayment and diminished value of the Vehicle.

12 72. Glenn Helmly is a Georgia citizen residing in Reidsville, Georgia.

13 73. Plaintiff Helmly purchased a new 2017 Hyundai Sante Fe Sport in
14 December 2016 from Savannah Hyundai in Savannah, Georgia, for \$28,000.00.
15 Plaintiff Helmly pays \$540 a month to pay off the Vehicle.

16 74. In order to start Plaintiff Helmly's Vehicle, a traditional key must be
17 inserted into the ignition.

18 75. Defendants manufactured Plaintiff Helmly's Vehicle without an
19 immobilizer.

20 76. Because Plaintiff Helmly's Vehicle contains the Defect, Plaintiff Helmly
21 is concerned that his Vehicle will be stolen.

22 77. Because Plaintiff Helmly's Vehicle contains the Defect, and the Defect was
23 present at the time he purchased the Vehicle but was not disclosed, Plaintiff Helmly
24 paid more for the Vehicle than he would have had Defendants disclosed the Defect prior
25 to his purchase.

26 78. Further, because Plaintiff Helmly's Vehicle contains the Defect, the resale
27 value of Plaintiff Helmly's Vehicle has been diminished because consumers now know
28

1 that these Vehicles are easy to steal. Accordingly, consumers will not pay what they
2 would otherwise be willing to pay if these Vehicles did not contain the Defect.

3 79. Plaintiff Helmly has suffered an ascertainable loss as a result of
4 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
5 the diminished resale value of his Vehicle, and the amount he overpaid for the Vehicle
6 at purchase because the Defect was not disclosed.

7 80. Nolan Glennon is an Illinois citizen residing in Downers Grove, Illinois.

8 81. Plaintiff Glennon purchased a new 2019 Kia Forte LXS on December 29,
9 2018, from Kia of Willowbrook of Willowbrook, Illinois.

10 82. In order to start Plaintiff Glennon's Vehicle, a traditional key must be
11 inserted into the ignition.

12 83. Defendants manufactured Plaintiff Glennon's Vehicle without an
13 immobilizer.

14 84. On April 9, 2022, thieves stole Plaintiff Glennon's Vehicle in Milwaukee
15 while he was on a trip.

16 85. Plaintiff Glennon's Vehicle was recovered approximately 4-5 days later.
17 Because Plaintiff Glennon was on a trip when his Vehicle was stolen, he had
18 approximately \$2,000 worth of personal possessions in his Vehicle, which were lost.

19 86. While Plaintiff Glennon's insurer will pay for the loss of his Vehicle,
20 Plaintiff Glennon was forced to pay approximately \$200 for a rental car.

21 87. Plaintiff Glennon has suffered an ascertainable loss as a result of
22 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
23 the cost of a rental car, and overpayment and diminished value of the Vehicle.

24 88. Derrick Beckwith is an Illinois citizen residing in Chicago, Illinois.

25 89. Plaintiff Beckwith purchased a new 2020 Kia Sportage in August 2019
26 from Berwin Kia in Berwin, Illinois, for \$26,000.00. Plaintiff Beckwith traded in a 2015
27
28

1 Kia Optima. A monthly payment of \$509.00 was made towards the vehicle until it was
2 paid off in the Spring of 2022.

3 90. In order to start Plaintiff Beckwith's Vehicle, a traditional key must be
4 inserted into the ignition.

5 91. Defendants manufactured Plaintiff Beckwith's Vehicle without an
6 immobilizer.

7 92. On August 23, 2022, Plaintiff Beckwith's Vehicle was stolen in Chicago,
8 Illinois.

9 93. When the Vehicle was subsequently located, its steering column was
10 broken, the passenger window was smashed, the vehicle was ransacked, and his
11 granddaughters' car seat was missing. All told, the Vehicle suffered approximately
12 \$4,600.00 in damage.

13 94. While Plaintiff Beckwith's insurer will cover the costs of repair, Plaintiff
14 Beckwith must pay his policy's \$1,000 deductible. However, many of the parts that are
15 needed to repair the Vehicle are back-ordered so the Vehicle was in the shop for
16 approximately eight weeks. Plaintiff Beckwith had to pay approximately \$90.00 a day
17 for a rental vehicle for approximately one week but was without transportation for
18 approximately three weeks.

19 95. Plaintiff Beckwith has suffered an ascertainable loss as a result of
20 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
21 his insurance deductible, and overpayment and diminished value of the Vehicle.

22 96. Glenn Latimer is an Illinois citizen residing in Chicago, Illinois.

23 97. Plaintiff Latimer purchased a used 2020 Kia Sorento in November 2021
24 from Kia of Lincolnwood in Lincolnwood, Illinois, for \$31,000.00. Plaintiff Latimer
25 traded in a former vehicle in lieu of a down payment and received \$6,000.00 towards
26 the purchase of the Kia. A monthly payment of \$536.03 is made on the vehicle.
27
28

1 98. In order to start Plaintiff Latimer's Vehicle, a traditional key must be
2 inserted into the ignition.

3 99. Defendants manufactured Plaintiff Latimer's Vehicle without an
4 immobilizer.

5 100. On July 7, 2022, Plaintiff Latimer's Vehicle was broken into in Chicago,
6 Illinois. The Vehicle had two smashed windows and the inside of the Vehicle was
7 heavily vandalized.

8 101. On July 17, 2022, Plaintiff Latimer's Vehicle was broken into a second
9 time in Chicago, Illinois. The Vehicle again had two windows smashed, the steering
10 wheel column was broken, the ignition switch was broken, and there was damage to the
11 rear end of the vehicle. Plaintiff Latimer's Vehicle could not be started due to the
12 damage to the ignition switch and had to be towed to the repair shop.

13 102. All told, Plaintiff Latimer's Vehicle suffered approximately \$7,000 in
14 damage between the two break-in events and attempted theft of the vehicle.

15 103. While Plaintiff Latimer's insurer will cover the costs of repair, Plaintiff
16 Latimer must pay his policy's \$500 deductible. However, he has had to cover the cost
17 of a rental car, which has cost him approximately \$1,000.00. In addition, Plaintiff
18 Latimer had personal items damaged or stolen, including a car battery charger, and two
19 vacuum cleaners which he uses for his job.

20 104. Because Plaintiff Latimer's Vehicle contains the Defect, and the Defect
21 was present at the time he purchased the Vehicle but was not disclosed, Plaintiff Latimer
22 paid more for the Vehicle than he would have had Defendants disclosed the Defect prior
23 to his purchase.

24 105. Further, because Plaintiff Latimer's Vehicle contains the Defect, the resale
25 value of Plaintiff Latimer's Vehicle has been diminished because consumers now know
26 that these Vehicles are easy to steal. Accordingly, consumers will not pay what they
27 would otherwise be willing to pay if these Vehicles did not contain the Defect.
28

1 106. To attempt to protect his Vehicle from theft, Plaintiff Latimer has
2 purchased a steering wheel club to lock the vehicle up when he leaves it.

3 107. Plaintiff Latimer has suffered an ascertainable loss as a result of
4 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
5 his insurance deductible, the diminished resale value of his Vehicle, and the amount he
6 overpaid for the Vehicle at purchase because the Defect was not disclosed.

7 108. Regina Wilson is an Illinois citizen residing in Belleville, Illinois.

8 109. Plaintiff Wilson purchased a used 2017 Kia Sorento in June 2022 from
9 Suntrup Kia in St. Louis, Missouri, for \$28,000.

10 110. In order to start Plaintiff Wilson's Vehicle, a traditional key must be
11 inserted into the ignition.

12 111. Defendants manufactured Plaintiff Wilson's Vehicle without an
13 immobilizer.

14 112. Because Plaintiff Wilson's Vehicle contains the Defect, Plaintiff Wilson is
15 concerned that her Vehicle will be stolen.

16 113. Because Plaintiff Wilson's Vehicle contains the Defect, and the Defect was
17 present at the time she purchased the Vehicle but was not disclosed, Plaintiff Wilson
18 paid more for the Vehicle than she would have had Defendants disclosed the Defect
19 prior to her purchase.

20 114. Further, because Plaintiff Wilson's Vehicle contains the Defect, the resale
21 value of Plaintiff Wilson's Vehicle has been diminished because consumers now know
22 that these Vehicles are easy to steal. Accordingly, consumers will not pay what they
23 would otherwise be willing to pay if these Vehicles did not contain the Defect.

24 115. To attempt to protect her Vehicle from theft, in October 2022 Plaintiff
25 Wilson has purchased a steering wheel club for roughly \$50.00.

26 116. Plaintiff Wilson has suffered an ascertainable loss as a result of
27 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
28

1 the diminished resale value of her Vehicle, and the amount she overpaid for the Vehicle
2 at purchase because the Defect was not disclosed.

3 117. Martha Hardwell is an Illinois citizen residing in Phoenix, Illinois.

4 118. Plaintiff Hardwell purchased a new 2020 Kia Soul in August 2021 from
5 Evergreen Kia in Chicago, Illinois. Plaintiff Hardwell paid a \$2,000.00 down payment
6 and makes a monthly payment of \$303.60 a month towards the Vehicle.

7 119. In order to start Plaintiff Hardwell's Vehicle, a traditional key must be
8 inserted into the ignition.

9 120. Defendants manufactured Plaintiff Hardwell's Vehicle without an
10 immobilizer.

11 121. On August 20, 2022, Plaintiff Hardwell's Vehicle was stolen in Phoenix,
12 Illinois.

13 122. When Plaintiff Hardwell's Vehicle was subsequently located, it had been
14 involved in an accident with extensive body damage. All told, Plaintiff Hardwell's
15 Vehicle suffered a total loss.

16 123. While Plaintiff Hardwell's insurer provided a check for the total loss of the
17 Vehicle once the claim was processed, Plaintiff Hardwell had to put down \$2,000 on a
18 new vehicle in addition to the \$8,000 check for the total loss. Plaintiff Hardwell had to
19 rent a car for two weeks while waiting for the insurance carrier to process her claim,
20 incurring approximately \$400 in rental car expenses. In addition, Plaintiff Hardwell
21 purchased a club for approximately \$50 to protect her new car.

22 124. Plaintiff Hardwell has suffered an ascertainable loss as a result of
23 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
24 her rental car expenses, and overpayment and diminished value of the Vehicle.

25 125. Jill Fisher is an Indiana citizen residing in Ft. Wayne, Indiana.

26 126. Plaintiff Fisher leased a new 2022 Kia Forte in March 2022 from Ft. Wayne
27 Kia.

1 127. In order to start Plaintiff Fisher's Vehicle, a traditional key must be inserted
2 into the ignition.

3 128. Defendants manufactured Plaintiff Fisher's Vehicle without an
4 immobilizer.

5 129. On July 24, 2022, thieves attempted to steal Plaintiff Fisher's Vehicle but
6 were interrupted by Plaintiff Fisher's neighbors before they could complete the theft.

7 130. Plaintiff Fisher's Vehicle had damage to the steering column as a result of
8 the attempted theft.

9 131. While Plaintiff Fisher's insurance policy will cover the costs of the repairs,
10 Plaintiff Fisher must pay her policy's \$500 deductible and was forced to pay
11 approximately \$300 for a car rental while the repairs were being performed.

12 132. Plaintiff Fisher has suffered an ascertainable loss as a result of Defendants'
13 wrongful conduct associated with the Defect, including, but not limited to, her insurance
14 deductible, and overpayment and diminished value of the Vehicle.

15 133. Laura Roberts is an Indiana citizen residing in Sellersburg, Indiana.

16 134. Plaintiff Roberts purchased a new 2021 Kia Forte from the Kia Store of
17 Clarksville, Indiana, at the end of May or first of June 2021.

18 135. In order to start Plaintiff Roberts's Vehicle, a traditional key must be
19 inserted into the ignition.

20 136. Defendants manufactured Plaintiff Roberts's Vehicle without an
21 immobilizer.

22 137. On September 17, 2022, thieves stole Plaintiff Roberts's Vehicle in
23 Louisville, Kentucky.

24 138. Plaintiff Roberts's Vehicle was recovered by police in Kentucky at or near
25 a homicide scene and is on "police hold." Blood was found on or in her Vehicle. The
26 police told her the Vehicle had extensive damage, including to the steering column.

1 139. While Plaintiff Roberts has insurance, the damage to the Vehicle resulted
2 in her insurer totaling the Vehicle. Accordingly, Plaintiff Roberts was required to pay
3 off her existing loan and purchase a new vehicle. While the insurer was deciding what
4 to do, and while Plaintiff Roberts was waiting to purchase a new vehicle, her insurer
5 paid \$25 a day for a rental car of up to \$600 total, with Plaintiff Roberts responsible for
6 all overages. Plaintiff Roberts missed a day of work as a result of the theft of her Vehicle
7 and lost some of her possessions that were in the Vehicle when it was stolen.

8 140. Plaintiff Roberts has suffered an ascertainable loss as a result of Defendant
9 Kia's wrongful conduct associated with the Defect, including, but not limited to, lost
10 wages and overpayment and diminished value of the Vehicle.

11 141. Kasey Weinfurtner is a Kentucky citizen residing in Newport, Kentucky.

12 142. Plaintiff Weinfurtner purchased a new 2020 Kia Sportage in July 2020
13 from Jake Sweeney Kia in Florence, Kentucky.

14 143. In order to start Plaintiff Weinfurtner's Vehicle, a traditional key must be
15 inserted into the ignition.

16 144. Defendants manufactured Plaintiff Weinfurtner's Vehicle without an
17 immobilizer.

18 145. On July 30, 2022, thieves broke into and attempted to steal Plaintiff
19 Weinfurtner's Vehicle in Clifton, Ohio.

20 146. Plaintiff Weinfurtner's Vehicle's window was broken and her Vehicle had
21 damage to the steering column as a result of the attempted theft.

22 147. While Plaintiff Weinfurtner's policy will cover the costs of the repairs,
23 Plaintiff Weinfurtner must pay her policy's \$500 deductible.

24 148. Plaintiff Weinfurtner has suffered an ascertainable loss as a result of
25 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
26 her insurance deductible, and overpayment and diminished value of the Vehicle.

27 149. Molly O'Connor is a Maryland citizen residing in Hyattsville, Maryland.
28

1 150. Plaintiff O'Connor purchased a used 2019 Kia Sorento LX in June
2 2020 from Darcars Lanham Kia of Lanham, Maryland.

3 151. In order to start Plaintiff O'Connor's Vehicle, a traditional key must be
4 inserted into the ignition.

5 152. Defendants manufactured Plaintiff O'Connor's Vehicle without an
6 immobilizer.

7 153. On September 25, 2022, thieves stole Plaintiff O'Connor's Vehicle from
8 outside her residence.

9 154. Plaintiff O'Connor's Vehicle was recovered on November 2, 2022, but, by
10 then, Plaintiff had closed out with the insurer and turned the Vehicle over to the insurer.
11 Plaintiff O'Connor had a months' old baby at the time of the theft so, in addition to her
12 stolen Vehicle, she lost a car seat base, stroller, and various other items that were kept
13 in her Vehicle.

14 155. While Plaintiff O'Connor's insurer paid for the loss of her Vehicle, her
15 policy has a \$300 deductible that she was forced to pay. Moreover, Plaintiff O'Connor
16 was forced to pay funds for a rental car.

17 156. Plaintiff O'Connor has suffered an ascertainable loss as a result of
18 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
19 her insurance deductible, and overpayment and diminished value of the Vehicle.

20 157. Connie Kesner is a Maryland citizen residing in Cumberland, Maryland.

21 158. Plaintiff Kesner purchased a new 2016 Kia Forte.

22 159. To start Plaintiff Kesner's Vehicle, a traditional key must be inserted into
23 the ignition.

24 160. Defendants manufactured Plaintiff Kesner's Vehicle without an
25 immobilizer.

26 161. Because Plaintiff Kesner's Vehicle contains the Defect, Plaintiff Kesner is
27 concerned that her Vehicle will be stolen.

1 162. Because Plaintiff Kesner's Vehicle contains the Defect, and the Defect was
2 present at the time she purchased the Vehicle but was not disclosed, Plaintiff Kesner
3 paid more for the Vehicle than she would have had Defendants disclosed the Defect
4 prior to her purchase.

5 163. Further, because Plaintiff Kesner's Vehicle contains the Defect, the resale
6 value of Plaintiff Kesner's Vehicle has been diminished because consumers now know
7 that these Vehicles are easy to steal. Accordingly, consumers will not pay what they
8 would otherwise be willing to pay if these Vehicles did not contain the Defect.

9 164. Plaintiff Kesner has suffered an ascertainable loss as a result of
10 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
11 the diminished resale value of her Vehicle, and the amount she overpaid for the Vehicle
12 at purchase because the Defect was not disclosed.

13 165. Annette Douglas is a Michigan citizen residing in Benton Harbor,
14 Michigan.

15 166. Plaintiff Douglas purchased a new 2021 Kia Sportage on October 31, 2020,
16 from Gurley Leep Kia in Mishawaka, Indiana. Plaintiff Douglas traded in her previous
17 vehicle, a 2015 Kia Soul, to cover a down payment and is paying approximately \$340.00
18 a month to pay off the Vehicle.

19 167. In order to start Plaintiff Douglas' Vehicle, a traditional key must be
20 inserted into the ignition.

21 168. Defendants manufactured Plaintiff Douglas' Vehicle without an
22 immobilizer.

23 169. On July 19, 2022, Plaintiff Douglas's Vehicle was stolen in Benton Harbor,
24 Michigan.

25 170. When the Vehicle was subsequently located, the back window was
26 smashed out, the steering wheel column was broken and torn out, the ignition switch
27
28

1 was broken, and one wheel was damaged. All told, the Vehicle suffered approximately
2 \$7,000.00 in damage.

3 171. While Plaintiff Douglas' insurer will cover the costs of repair, Plaintiff
4 Douglas must pay her policy's \$500 deductible. However, many of the parts that are
5 needed to repair the Vehicle are back-ordered, so it will be in the shop indefinitely.
6 Plaintiff Douglas' insurance company covered the rental car for 40 days. Plaintiff
7 Douglas had to pay out of pocket for the rental car for one day. In addition, Plaintiff
8 Douglas currently has to pay for rides to and from work, the grocery store, and church.
9 Plaintiff Douglas also had numerous items in the car stolen or damaged during the theft,
10 including her GPS, automatic starter, and prescription sunglasses.

11 172. Plaintiff Douglas has suffered ascertainable loss as a result of Defendants'
12 wrongful conduct associated with the Defect, including, but not limited to, her insurance
13 deductible, payments for rides, theft of her personal property, and overpayment and
14 diminished value of the Vehicle.

15 173. Jacquelynne Sutton is a Minnesota citizen residing in Minneapolis,
16 Minnesota.

17 174. Plaintiff Sutton leased a new 2020 Kia Sportage in April 2020 from
18 Brookland Park Kia in Brookland Park, Minnesota. Plaintiff Sutton paid a \$750 down
19 payment and is paying \$448 a month to lease the Vehicle.

20 175. In order to start Plaintiff Sutton's Vehicle, a traditional key must be
21 inserted into the ignition.

22 176. Defendants manufactured Plaintiff Sutton's Vehicle without an
23 immobilizer.

24 177. On September 23, 2022, Plaintiff Sutton's Vehicle was stolen in
25 Minneapolis, Minnesota.

1 178. When the Vehicle was subsequently located, the back window was
2 smashed out, and the Vehicle was totaled in an accident. All told, the Vehicle suffered
3 a total loss.

4 179. While Plaintiff Sutton's insurer has paid off the balanced owed on her
5 lease, Plaintiff Sutton has not found a replacement car yet, and cannot afford a new
6 vehicle. Plaintiff Sutton has had to use Uber and Lyft, or pay a friend, to get to work
7 and run basic errands such as going to the grocery store. Plaintiff Sutton's insurer
8 covered about two weeks of a rental car, but Plaintiff Sutton has paid approximately
9 \$1,500.00 to repair a used family vehicle to be able to use once she no longer has the
10 rental car.

11 180. Plaintiff Sutton has suffered an ascertainable loss as a result of Defendants'
12 wrongful conduct associated with the Defect, including, but not limited to, out of pocket
13 expenses, and overpayment and diminished value of the Vehicle.

14 181. Thomas Dehler is a Minnesota citizen residing in Maple Grove, Minnesota.

15 182. Plaintiff Dehler purchased a new 2015 Kia Sportage in October 2014 from
16 Brookland Park Kia in Brookland Park, Minnesota for \$24,944.00. Plaintiff Dehler paid
17 \$8,000 for a down payment, received \$3,200 for a trade-in, and had to pay \$287 a month
18 to finance the vehicle. Plaintiff Dehler paid off the vehicle within two months of the
19 date of purchase.

20 183. In order to start Plaintiff Dehler's Vehicle, a traditional key must be
21 inserted into the ignition.

22 184. Defendants manufactured Plaintiff Dehler's Vehicle without an
23 immobilizer.

24 185. On June 29, 2022, Plaintiff Dehler's Vehicle was broken into and
25 attempted to be stolen. The back window was smashed and the steering column was
26 scratched. All told, the Vehicle suffered approximately \$500 in damage.

1 186. Plaintiff Dehler now pays an additional \$50 per month to store his Vehicle
2 in a garage.

3 187. Because Plaintiff Dehler's Vehicle contains the Defect, and the Defect was
4 present at the time he purchased the Vehicle but was not disclosed, Plaintiff Dehler paid
5 more for the Vehicle than he would have had Defendants disclosed the Defect prior to
6 his purchase.

7 188. Further, because Plaintiff Dehler's Vehicle contains the Defect, the resale
8 value of Plaintiff Dehler's Vehicle has been diminished because consumers now know
9 that these Vehicles are easy to steal. Accordingly, consumers will not pay what they
10 would otherwise be willing to pay if these Vehicles did not contain the Defect.

11 189. To attempt to protect his Vehicle from theft, Plaintiff Dehler has purchased
12 a club for approximately \$37 to use to protect the vehicle.

13 190. Plaintiff Dehler has suffered an ascertainable loss as a result of Defendants'
14 wrongful conduct associated with the Defect, including, but not limited to, the damage
15 to his Vehicle, the diminished resale value of his Vehicle, and the amount he overpaid
16 for the Vehicle at purchase because the Defect was not disclosed.

17 191. John Pope is a Minnesota citizen residing in Minneapolis, Minnesota.

18 192. Plaintiff Pope purchased a used 2018 Kia Optima on or about April 16,
19 2021, from Luther Kia in Bloomington, Minnesota. Plaintiff Pope paid approximately
20 \$16,258.00 to purchase the Vehicle.

21 193. In order to start Plaintiff Pope's Vehicle, a traditional key must be inserted
22 into the ignition.

23 194. Defendants manufactured Plaintiff Pope's Vehicle without an immobilizer.

24 195. On June 14, 2022, Plaintiff Pope's Vehicle was stolen from the parking lot
25 outside his residence in Minneapolis, Minnesota.

26 196. When the Vehicle was subsequently located, the Vehicle's back window
27 was broken and the steering column cladding was found removed.
28

1 197. All told, the Vehicle suffered approximately \$500.00 in damage. While
2 Plaintiff Pope's insurer will cover the costs of repair, Plaintiff Pope must pay his
3 policy's \$500 deductible.

4 198. Plaintiff Pope has suffered an ascertainable loss as a result of Defendants'
5 wrongful conduct associated with the Defect, including, but not limited to, his insurance
6 deductible, and overpayment and diminished value of the Vehicle.

7 199. Lexii Cummings is an Ohio citizen residing in Columbus, Ohio.

8 200. Plaintiff Cummings purchased a used 2018 Hyundai Elantra in September
9 2021 from Germain Hyundai in Columbus, Ohio.

10 201. In order to start Plaintiff Cummings's Vehicle, a traditional key must be
11 inserted into the ignition.

12 202. Defendants manufactured Plaintiff Cummings's Vehicle without an
13 immobilizer.

14 203. On or about August 11, 2022, thieves stole Plaintiff Cummings's Vehicle.

15 204. When Plaintiff Cummings's Vehicle was recovered, it had a broken
16 window and extensive damage to the ignition. All told, the Vehicle suffered
17 approximately \$7,200 in damage.

18 205. While Plaintiff Cummings has insurance to cover the cost of the repairs,
19 Plaintiff Cummings must pay her policy's \$500 deductible and any rental car charges
20 required beyond \$30 a day for 30 days.

21 206. Plaintiff Cummings has suffered an ascertainable loss as a result of
22 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
23 her insurance deductible, and overpayment and diminished value of the Vehicle.

24 207. Shea Donahue is an Ohio citizen residing in East Liverpool, Ohio.

25 208. Plaintiff Donahue purchased a new 2022 Kia Sportage in December 2011
26 from Taylor Kia Boardman in Boardman, Ohio, for \$33,000.00. Plaintiff Donahue paid
27 a \$5,000 down payment and is paying \$630 a month to pay off the vehicle.
28

1 209. In order to start Plaintiff Donahue's Vehicle, a traditional key must be
2 inserted into the ignition.

3 210. Defendants manufactured Plaintiff Donahue's Vehicle without an
4 immobilizer.

5 211. Because Plaintiff Donahue's Vehicle contains the Defect, Plaintiff
6 Donahue is concerned that her Vehicle will be stolen.

7 212. Because Plaintiff Donahue's Vehicle contains the Defect, and the Defect
8 was present at the time she purchased the Vehicle but was not disclosed, Plaintiff
9 Donahue paid more for the Vehicle than she would have had Defendants disclosed the
10 Defect prior to her purchase.

11 213. Further, because Plaintiff Donahue's Vehicle contains the Defect, the
12 resale value of Plaintiff Donahue's Vehicle has been diminished because consumers
13 now know that these Vehicles are easy to steal. Accordingly, consumers will not pay
14 what they would otherwise be willing to pay if these Vehicles did not contain the Defect.

15 214. Plaintiff Donahue has suffered an ascertainable loss as a result of
16 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
17 the diminished resale value of her Vehicle and the amount she overpaid for the Vehicle
18 at purchase because the Defect was not disclosed.

19 215. Shana Eberhardt is a Pennsylvania citizen residing in Carnegie,
20 Pennsylvania.

21 216. Plaintiff Eberhardt purchased a certified pre-owned 2011 Kia Sorento in
22 February 2015 from Monroeville Kia in Monroeville, Pennsylvania.

23 217. In order to start Plaintiff Eberhardt's Vehicle, a traditional key must be
24 inserted into the ignition.

25 218. Defendants manufactured Plaintiff Eberhardt's Vehicle without an
26 immobilizer.

1 219. Because Plaintiff Eberhardt's Vehicle contains the Defect, Plaintiff
2 Eberhardt is concerned that her Vehicle will be stolen.

3 220. Further, because Plaintiff Eberhardt's Vehicle contains the Defect, the
4 resale value of Plaintiff Eberhardt's Vehicle has been diminished because consumers
5 now know that these Vehicles are easy to steal. Accordingly, consumers will not pay
6 what they would otherwise be willing to pay if these Vehicles did not contain the Defect.

7 221. Plaintiff Eberhardt has suffered an ascertainable loss as a result of
8 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
9 the diminished resale value of her Vehicle, and the amount she overpaid for the Vehicle
10 at purchase because the Defect was not disclosed.

11 222. Tiffany Devonish is a Rhode Island citizen residing in Providence, Rhode
12 Island.

13 223. Plaintiff Devonish purchased a used 2020 Kia Sportage LX in May or June
14 2021 from Wagner Kia of Shrewsbury of Shrewsbury, Massachusetts.

15 224. In order to start Plaintiff Devonish's Vehicle, a traditional key must be
16 inserted into the ignition.

17 225. Defendants manufactured Plaintiff Devonish's Vehicle without an
18 immobilizer.

19 226. On the evening of September 13 or the morning of September 14, 2022,
20 thieves stole Plaintiff Devonish's Vehicle.

21 227. Plaintiff Devonish's Vehicle was recovered on September 16, 2022: a USB
22 cord was in the ignition, the steering column was ripped out with wires showing, the
23 rear driver side window was smashed, and the windshield wiper was broken. The
24 damage to Plaintiff Devonish's Vehicle totaled \$4,019.

25 228. While Plaintiff Devonish's insurer will cover the cost of the repairs, her
26 policy has a \$500 deductible, which she was forced to pay. Moreover, Plaintiff Devonish
27 was forced to pay \$369.79 for rental car insurance while her Vehicle was being repaired.
28

1 229. Plaintiff Devonish has suffered an ascertainable loss as a result of
2 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
3 her insurance deductible and overpayment and diminished value of the Vehicle.

4 230. Celeste Jacobs is a Rhode Island citizen residing in Providence, Rhode
5 Island.

6 231. Plaintiff Jacobs purchased a used 2021 Kia Forte in October 2021 from
7 Grieco Hyundai in Johnston, Rhode Island, for \$25,000.00. Plaintiff Jacobs did not put
8 money down on the Vehicle, but she is paying \$549 a month to pay off the vehicle.

9 232. In order to start Plaintiff Jacobs' Vehicle, a traditional key must be inserted
10 into the ignition.

11 233. Defendants manufactured Plaintiff Jacobs' Vehicle without an
12 immobilizer.

13 234. Because Plaintiff Jacobs' Vehicle contains the Defect, Plaintiff Jacobs is
14 concerned that her Vehicle will be stolen.

15 235. Because Plaintiff Jacobs' Vehicle contains the Defect, and the Defect was
16 present at the time she purchased the Vehicle but was not disclosed, Plaintiff Jacobs
17 paid more for the Vehicle than she would have had Defendants disclosed the Defect
18 prior to her purchase.

19 236. Further, because Plaintiff Jacobs' Vehicle contains the Defect, the resale
20 value of Plaintiff Jacobs' Vehicle has been diminished because consumers now know
21 that these Vehicles are easy to steal. Accordingly, consumers will not pay what they
22 would otherwise be willing to pay if these Vehicles did not contain the Defect.

23 237. Plaintiff Jacobs has suffered an ascertainable loss as a result of Defendants'
24 wrongful conduct associated with the Defect, including, but not limited to, the
25 diminished resale value of her Vehicle, and the amount she overpaid for the Vehicle at
26 purchase because the Defect was not disclosed.

1 238. Bryan Roberts is a South Carolina citizen residing in Fort Mill, South
2 Carolina.

3 239. Plaintiff Roberts leased a new 2020 Kia Forte in September 2020 from
4 Union County Kia in Monroe, North Carolina, for \$21,300.00. Plaintiff Roberts paid a
5 \$1,500 down payment and paid \$254 per month to lease the vehicle.

6 240. In order to start Plaintiff Roberts' Vehicle, a traditional key must be
7 inserted into the ignition.

8 241. Defendants manufactured Plaintiff Roberts' Vehicle without an
9 immobilizer.

10 242. Because Plaintiff Roberts' Vehicle contains the Defect, Plaintiff Roberts is
11 concerned that his Vehicle will be stolen.

12 243. Because Plaintiff Roberts' Vehicle contains the Defect, and the Defect was
13 present at the time he purchased the Vehicle but was not disclosed, Plaintiff Roberts
14 paid more for the Vehicle than he would have had Defendants disclosed the Defect prior
15 to his purchase.

16 244. Further, because Plaintiff Roberts' Vehicle contains the Defect, the resale
17 value of Plaintiff Roberts' Vehicle has been diminished because consumers now know
18 that these Vehicles are easy to steal. Accordingly, consumers will not pay what they
19 would otherwise be willing to pay if these Vehicles did not contain the Defect.

20 245. Plaintiff Roberts has suffered an ascertainable loss as a result of
21 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
22 the diminished resale value of his Vehicle, and the amount he overpaid for the Vehicle
23 at purchase because the Defect was not disclosed.

24 246. Brian Helm is a Tennessee citizen residing in Memphis, Tennessee.

25 247. Plaintiff Helm purchased a new 2022 Hyundai Kona in November 2021
26 from Wolfchase Hyundai in Memphis, Tennessee.

1 248. In order to start Plaintiff Helm's Vehicle, a traditional key must be inserted
2 into the ignition.

3 249. Defendants manufactured Plaintiff Helm's Vehicle without an
4 immobilizer.

5 250. On September 2, 2022, thieves attempted to steal Plaintiff Helm's Vehicle
6 in Memphis, Tennessee.

7 251. The steering column in Plaintiff Helm's Vehicle was damaged in the
8 attempted theft.

9 252. While Plaintiff Helm's insurer will cover the costs of repair, Plaintiff Helm
10 must pay his policy's \$750 deductible. Additionally, Plaintiff Helm is an Uber driver.
11 Without his Vehicle, he was unable to do his job. Plaintiff Helm has been forced to rent
12 a replacement vehicle at a cost of approximately \$375 a week.

13 253. Plaintiff Helm has suffered an ascertainable loss as a result of Defendants'
14 wrongful conduct associated with the Defect, including, but not limited to, his insurance
15 deductible, and overpayment and diminished value of the Vehicle.

16 254. Carolyn Catlos is a Michigan citizen residing in Detroit, Michigan.

17 255. Plaintiff Catlos purchased a new 2015 Kia Soul in June 2015 from Fredy
18 Kia in Houston, Texas.

19 256. In order to start Plaintiff Catlos's Vehicle, a traditional key must be inserted
20 into the ignition.

21 257. Defendants manufactured Plaintiff Catlos's Vehicle without an
22 immobilizer.

23 258. On the morning of October 26, 2022, thieves stole Plaintiff Catlos's
24 Vehicle from outside her residence.

25 259. Plaintiff Catlos's Vehicle was recovered on October 31, 2022 but it was so
26 damaged that her insurer declared the Vehicle a total loss. Although Plaintiff Catlos has
27 insurance, the amount she was paid by her insurer was reduced by \$1,000, the cost of
28

1 her deductible. Additionally, as a result of the theft, she suffered out of pocket expenses
2 including Uber and Lyft rides, and the loss of a roof rack and a kayak holder
3 (collectively valued at approximately \$1,000).

4 260. Plaintiff Catlos has suffered an ascertainable loss as a result of Defendants'
5 wrongful conduct associated with the Defect, including, but not limited to, her insurance
6 deductible, and overpayment and diminished value of the Vehicle.

7 261. Michael Scalise is a Wisconsin citizen residing in Mequon, Wisconsin.

8 262. Plaintiff Scalise leased a new 2021 Kia Forte in April 2021 from Janesville
9 Kia in Janesville, Wisconsin.

10 263. In order to start Plaintiff Scalise's Vehicle, a traditional key must be
11 inserted into the ignition.

12 264. Defendants manufactured Plaintiff Scalise's Vehicle without an
13 immobilizer.

14 265. Because Plaintiff Scalise's Vehicle contains the Defect, Plaintiff Scalise is
15 concerned that his Vehicle will be stolen.

16 266. Further, because Plaintiff Scalise's Vehicle contains the Defect, the resale
17 value of Plaintiff Scalise's Vehicle has been diminished because consumers now know
18 that these Vehicles are easy to steal. Accordingly, consumers will not pay what they
19 would otherwise be willing to pay if these Vehicles did not contain the Defect.

20 267. Plaintiff Scalise has suffered an ascertainable loss as a result of
21 Defendants' wrongful conduct associated with the Defect, including, but not limited to,
22 the diminished resale value of his Vehicle, and the amount he overpaid for the Vehicle
23 at purchase because the Defect was not disclosed.

24 **B. Defendants**

25 268. Defendant Kia America, Inc. is a California corporation with a principal
26 place of business at 111 Peters Canyon Road, Irvine, California 92606.

1 269. Defendant Hyundai Motor America is a California corporation with a
2 principal place of business at 10550 Talbert Avenue, Fountain Valley, California 92708.

3 IV. FACTUAL ALLEGATIONS

4 270. Immobilizers have been proven to deter auto theft. Indeed, a 2016 study
5 reflects that the use of immobilizers lowered the overall rate of car thefts by 40% over
6 a ten-year period.¹

7 271. Recognizing the value of immobilizers as an anti-theft device, countries
8 across the globe require immobilizers to be installed as standard equipment in new
9 vehicles. For example, the European Union has required immobilizers as a standard
10 feature for all new vehicles since 1998, Australia since 2001, and Canada since 2007.²

11 272. Kia and Hyundai, however, have largely refused to implement
12 immobilizers as standard technology in virtually all of their vehicle lines. Defendants
13 have long been aware of the anti-theft benefits attendant to making immobilizers a
14 standard feature on their vehicles based on the immobilizer mandates of other countries
15 in which Kia and Hyundai sell their vehicles. Kia and Hyundai sell virtually identical
16 vehicles to the Class Vehicles in countries with immobilizer requirements, but have
17 largely failed to equip Vehicles sold in the United States with the same immobilizer
18 technology designed to prevent auto theft.

19 273. Kia and Hyundai likely refused to implement this technology as a standard
20 feature in the Class Vehicles as a cost-saving measure to improve their profitability.

21 274. Given the ease with which Class Vehicles can be stolen, the United States
22 has experienced a swell in reported car thefts of Vehicles.³ For instance, in Milwaukee,
23

24 ¹ Jan C. van Ours & Ben Vollaard, *The Engine Immobilizer: A Non-Starter For*
25 *Car Thieves*, THE ECONOMIC JOURNAL, Vol. 126, No. 593, 1264, 1283 (June 2016).

26 ² *Id.* at 1265.

27 ³ Plaintiffs' research indicates that "[n]ationally, almost 60,000 Hyundai and Kia
28 vehicles have been stolen this year through Aug. 31." Michelle Basch, *Why Hyundai,*
Kia owners should be especially concerned about car thieves, WTOP NEWS (Oct. 24,

1 Wisconsin, where Plaintiff McNerney's Vehicle was stolen, two of the three vehicle
2 makes accounting for nearly 60% of vehicle thefts are Kia and Hyundai.⁴

3 275. The cost to repair stolen Vehicles can be substantial. The cost to repair a
4 window and steering column on a Class Vehicle alone can exceed \$3,000.⁵ Because cars
5 taken on joy rides often experience further damage, the owner's total cost to repair their
6 vehicle often exceed \$10,000.⁶

7 276. Moreover, due to the alarming rate in which Class Vehicles are being
8 stolen, Defendants' authorized dealers and repair shops are experiencing shortages of
9 the parts needed to repair them. Some parts are back-ordered up to eight weeks.⁷

10 277. The federal government has long recognized that "stolen cars constitute a
11 major hazard to life and limb on the highways." 33 Fed. Reg. 6,471, (Apr. 27, 1968).
12 Moreover, "cars operated by unauthorized persons are far more likely to cause
13 unreasonable risk of accident, personal injury, and death than those which are driven by
14 authorized individuals." *Id.*

15 278. The rate at which these Vehicles are being stolen is so high that certain
16 auto insurance companies are either refusing to insure these Vehicles or have raised the
17

18
19 2022), <https://wtop.com/crime/2022/10/why-hyundai-kia-owners-should-be-especially-concerned-about-car-thieves/> (last accessed Nov. 16, 2022).

20 ⁴ Tony Atkins, *Honda, Hyundai, Kias among Milwaukee's most stolen cars, police*
21 *warn*, TMJ 4 (Dec. 2, 2020), <https://www.tmj4.com/news/local-news/honda-hyundai-kias-among-milwaukees-most-stolen-cars-police-warn> (last accessed Nov. 16, 2022);
22 Winnie Dortch, *Most stolen cars in Milwaukee: Kia, Hyundai and Honda models*,
23 WDJT MILWAUKEE (Dec. 2, 2020), <https://www.cbs58.com/news/most-stolen-cars-in-milwaukee-kia-hyundai-and-honda-models> (last accessed Nov. 16, 2022).

24 ⁵ James E. Causey, *Motor vehicle thefts in Milwaukee are up 152%. Auto repair*
25 *businesses say the worst may be yet to come*, MILWAUKEE JOURNAL SENTINEL (Feb. 3,
26 2021), <https://www.jsonline.com/story/news/solutions/2021/02/03/motorvehicle-thefts-up-152-milwaukee-so-far-2021/4266701001/> (last accessed Nov. 16, 2022).

27 ⁶ *Id.*

28 ⁷ *Id.*

1 rates. The following statement from Progressive was recently released to ABC 7 News
2 Denver:

3 We're committed to providing affordable insurance solutions
4 for consumers based on the particular level of risk while also
5 ensuring our policies are accurately priced. Due to the theft
6 risk that some Hyundai and Kia vehicles present, in many
7 cases it makes these vehicles difficult to insure, so we have
8 adjusted our acceptance criteria for new business on some of
these models. We'll continue to monitor how this issue plays
out, and are hopeful to be able to revisit our decision if the
theft risk diminishes and community awareness improves.^[8]

9 279. Other harms caused by the auto theft include increased insurance premiums
10 foisted upon the victims of these crimes, other property that is stolen or damaged in the
11 process, and the diminution in value of the Class Vehicles being targeted.

12 280. Notably, the Vehicles fail to comply with Federal Motor Vehicle Safety
13 Standard ("FMVSS") 114, which requires: "Each vehicle must have a starting system
14 which, whenever the key is removed from the starting system prevents: (a) The normal
15 activation of the vehicle's engine or motor; and (b) Either steering, or forward self-
16 mobility, of the vehicle, or both."

17 281. If the Vehicles were manufactured to comply with this FMVSS, then they
18 would not be stolen at such alarming rates because when the key is removed from the
19 starting system, both steering and forward self-mobility would be prevented.

20 282. Recognizing the gravity of the problem, Defendants have announced that
21 all new model vehicles will be equipped with an immobilizer.⁹ But this change offers
22

23 ⁸ Mercedes Streeter, *Progressive Reportedly Won't Insure Some Kias And*
24 *Hyundais Because They're Too Easy To Steal*, THE AUTOPIAN (Aug. 17, 2022),
25 <https://www.theautopian.com/progressive-reportedly-wont-insure-some-kias-and-hyundais-because-theyre-too-easy-to-steal/> (last accessed Nov. 16, 2022).

26 ⁹ Jeramey Jannene, *Two-Thirds of All Milwaukee Auto Thefts Are Kia and Hyundai*
27 *Vehicles*, RBAN MILWAUKEE (July 4, 2021),
28 <https://urbanmilwaukee.com/2021/07/24/two-thirds-of-all-milwaukee-auto-thefts-are-kia-and-hyundai-vehicles/> (last accessed Nov. 16, 2022).

1 little consolation to the thousands of consumers whose defective Vehicles remain
2 vulnerable to theft.

3 283. Defendants have long known the security benefits offered by immobilizers.
4 Indeed, Defendants have been selling virtually identical vehicles equipped with
5 immobilizers overseas for decades, and have even incorporated immobilizers as
6 standard technology into select higher-end models, but Defendants have simply refused
7 to follow their competitors by making it standard technology on their lower-cost brands.

8 284. The ease with which the Class Vehicles may be stolen is not surprising to
9 Defendants. Upon information and belief, Defendants have known of the unusually high
10 rate of thefts experienced by Class Vehicles for many years, through scores of customer
11 complaints relayed through their dealers.

12 285. Moreover, Defendants must have known of how these Vehicles were being
13 stolen because they sell replacement parts to dealerships and auto body shops around
14 the country that are needed to repair the stolen Vehicles. Because the Vehicles are being
15 stolen in the same way, Defendants would have experienced a spike in orders for the
16 same replacement parts.

17 286. But Defendants continued to sell the Class Vehicles, flooding the market
18 with more unsafe cars susceptible to theft. Only when the problem became too large to
19 ignore did Defendants decide to introduce immobilizer technology to all future new
20 vehicles going forward.

21 287. Meanwhile, the Class members who have previously purchased the
22 Vehicles remain vulnerable.

23 **V. CHOICE OF LAW ALLEGATIONS**

24 288. Because this Complaint is brought in California, California's choice of law
25 regime governs the state law allegations in this Complaint. Under California's choice of
26 law rules, California law applies to the claims of all Class members, regardless of their
27 state of residence or state of purchase.

1 289. Because Defendants are headquartered—and made all decisions relevant
2 to these claims—in California, California has a substantial connection to, and materially
3 greater interest in, the rights, interests, and policies involved in this action than any other
4 state. Application of California law to Defendants and the claims of all Class members
5 would not be arbitrary or unfair.

6 290. Plaintiffs plead claims on behalf of a nationwide class because the laws for
7 each state do not vary materially for these claims. Alternatively, Plaintiffs plead state
8 law classes claims as indicated below. This Complaint refers to the nationwide and state
9 classes collectively as the “Class,” unless noted otherwise.

10 **VI. CLASS ACTION ALLEGATIONS**

11 291. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated under Fed. R. Civ. P. 23.

13 292. Subject to confirmation, clarification and/or modification based on
14 discovery to be conducted in this action, the classes that Plaintiffs seek to represent shall
15 be defined as follows:

16 All persons and entities nationwide that purchased or leased a Class
17 Vehicle (the “Nationwide Class”).

18 All persons and entities that purchased or leased a Class Vehicle in
19 the State of Alabama (the “Alabama Class”).

20 All persons and entities that purchased or leased a Class Vehicle in
21 the State of Arkansas (the “Arkansas Class”).

22 All persons and entities that purchased or leased a Class Vehicle in
23 the State of California (the “California Class”).

24 All persons and entities that purchased or leased a Class Vehicle in
25 the State of Delaware (the “Delaware Class”).

26 All persons and entities that purchased or leased a Class Vehicle in
27 the State of Georgia (the “Georgia Class”).
28

1 All persons and entities that purchased or leased a Class Vehicle in
2 the State of Illinois (the “Illinois Class”).

3 All persons and entities that purchased or leased a Class Vehicle in
4 the State of Indiana (the “Indiana Class”).

5 All persons and entities that purchased or leased a Class Vehicle in
6 the State of Kentucky (the “Kentucky Class”).

7 All persons and entities that purchased or leased a Class Vehicle in
8 the State of Maryland (the “Maryland Class”).

9 All persons and entities that purchased or leased a Class Vehicle in
10 the State of Massachusetts (the “Massachusetts Class”).

11 All persons and entities that purchased or leased a Class Vehicle in
12 the State of Michigan (the “Michigan Class”).

13 All persons and entities that purchased or leased a Class Vehicle in
14 the State of Minnesota (the “Minnesota Class”).

15 All persons and entities that purchased or leased a Class Vehicle in
16 the State of North Carolina (the “North Carolina Class”).

17 All persons and entities that purchased or leased a Class Vehicle in
18 the State of Ohio (the “Ohio Class”).

19 All persons and entities that purchased or leased a Class Vehicle in
20 the State of Pennsylvania (the “Pennsylvania Class”).

21 All persons and entities that purchased or leased a Class Vehicle in
22 the State of Rhode Island (the “Rhode Island Class”).

23 All persons and entities that purchased or leased a Class Vehicle in
24 the State of Tennessee (the “Tennessee Class”).

25 All persons and entities that purchased or leased a Class Vehicle in
26 the State of Texas (the “Texas Class”).

27 All persons and entities that purchased or leased a Class Vehicle in
28 the State of Wisconsin (the “Wisconsin Class”).

(Collectively, the “Class” unless otherwise noted.)

1 293. Excluded from the Class are: (1) Defendants, any entity in which
2 Defendants have a controlling interest, and their legal representatives, officers,
3 directors, employees, assigns and successors; (2) the Judge to whom this case is
4 assigned and any member of the Judge's staff or immediate family; and (3) Class
5 Counsel.

6 294. Plaintiffs seek only damages and injunctive relief on behalf of themselves
7 and the Class members. Plaintiffs disclaim any intent or right to seek any recovery in
8 this action for personal injuries, wrongful death, or emotional distress suffered by
9 Plaintiffs and/or the Class members.

10 295. While the exact number of Class members is unknown to Plaintiffs at this
11 time and can only be determined by appropriate discovery, membership in the Class is
12 ascertainable based upon the records maintained by Defendants and governmental
13 officials. Upon information and belief, Defendants have sold and leased many thousands
14 of Vehicles nationwide during the relevant time period. Therefore, the Class members
15 are so numerous that individual joinder of all Class members is impracticable under Fed.
16 R. Civ. P. 23(a)(1).

17 296. Common questions of law and fact exist as to all Class members. These
18 common legal and factual questions include:

- 19 (a) Whether Defendants designed, advertised, sold, and placed the Class
20 Vehicles into the stream of commerce;
- 21 (b) Whether the Class Vehicles were sold with the Defect described
22 above;
- 23 (c) Whether the Defect in the Class Vehicles is a safety and/or security
24 defect that created a foreseeable risk of harm to Plaintiffs and the
25 Class;
- 26 (d) Whether Defendants breached implied warranties made to the Class
27 members;
- 28 (e) Whether Defendants knew about the Defect and, if so, how long
Defendants have known about the Defect;

- 1 (f) Whether Defendants concealed the Defect;
- 2 (g) Whether Defendants' conduct violates consumer protection statutes,
- 3 warranty laws, and other laws asserted herein;
- 4 (h) Whether the Class members have suffered damages as a result of the
- 5 conduct alleged herein, and if so, the measure of such damages,
- 6 including diminution of value and deprivation of the benefit of the
- 7 bargain; and
- 8 (i) Whether the Class members are entitled to injunctive relief.

9 297. Plaintiffs' claims are typical of the claims of the Class members whom they
10 seek to represent under Fed. R. Civ. P. 23(a)(3) because Plaintiffs and each Class
11 member have a Vehicle with the same Defect.

12 298. Plaintiffs will fairly and adequately represent and protect the interests of
13 the Class members as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs are adequate
14 representatives because their interests do not conflict with the interests of the Class
15 members. Further, Plaintiffs have retained counsel competent and experienced in
16 complex class action litigation, including automotive defect class action litigation, and
17 Plaintiffs intend to prosecute this action vigorously. Therefore, the interests of the Class
18 members will be fairly and adequately protected.

19 299. A class action is appropriate under Fed. R. Civ. P. 23(b)(3) because
20 questions of law or fact common to Class members predominate over any questions
21 affecting only individual members, and a class action is superior to any other available
22 means for fairly and efficiently adjudicating the controversy. In this regard, the Class
23 members' interests in individually controlling the prosecution of separate actions is low
24 given the magnitude, burden, and expense of individual prosecutions against large
25 corporations such as Defendants. It is desirable to concentrate this litigation in this
26 forum to avoid burdening the courts with individual lawsuits. Individualized litigation
27 presents a potential for inconsistent or contradictory results and also increases the delay
28 and expense to all parties and the court system presented by the legal and factual issues

1 of this case. By contrast, the class action procedure here will have no management
 2 difficulties. Defendants' records and the records available publicly will easily identify
 3 the Class members. The Defect is common to all Vehicles; therefore, the same common
 4 documents and testimony will be used to prove Plaintiffs' claims as well as the claims
 5 of the Class members. Finally, proceeding as a class action provides the benefits of
 6 single adjudication, economies of scale, and comprehensive supervision by a single
 7 court

8 300. A class action is appropriate under Fed. R. Civ. P. 23(b)(2) because, as
 9 stated above, Defendants have acted or refused to act on grounds that apply generally
 10 to the Class members, so that final injunctive relief or corresponding declaratory relief
 11 is appropriate as to all Class members.

12 **VII. CLAIMS**

13 **A. Claims Brought on Behalf of the Nationwide Class**

14 **COUNT I** 15 **BREACH OF IMPLIED WARRANTY** 16 **(BASED ON CALIFORNIA LAW)**

17 301. Plaintiffs re-allege and incorporate each and every allegation set forth
 18 above as if fully written herein.

19 302. This count is brought under California law on behalf of a Nationwide Class.

20 303. As detailed herein, Defendants designed, manufactured, distributed, and sold
 21 the Class Vehicles knowing that consumers like Plaintiffs and the Class would purchase
 22 these products from Kia and Hyundai's authorized dealers as a means of transportation

23 304. As merchants of the Class Vehicles, Kia and Hyundai warranted to the
 24 Plaintiffs and the Class that the Class Vehicles were fit for the ordinary purpose for
 25 which they are used.

26 305. Plaintiffs relied on this warranty to their detriment.

27 306. The Class Vehicles are not "merchantable" because they are not reasonably
 28 fit for the ordinary purpose for which they are sold, which is to provide safe, reliable

1 transportation. To the contrary, the Class Vehicles pose a substantial safety hazard
2 because the Defect renders them vulnerable to theft, making them prime targets to be
3 used as instrumentalities through which thieves engage in reckless driving or other
4 criminal activity.

5 307. Sufficient privity of contract exists to assert this implied warranty claim.

6 308. Defendants market and advertise the sale of the Class Vehicles in various
7 media outlets across the United States, including to the Plaintiffs and the Class.

8 309. Defendants advertise their authorized dealer network on their respective
9 websites and task them with administering the promotional material and warranty
10 information for new Class Vehicles to prospective consumers throughout the nation.
11 Through Defendants' websites, consumers obtain information about vehicles; design
12 specific vehicles to meet his or her needs; obtain information about the value of trade-
13 in vehicles; request additional marketing materials; and request quotes for vehicles.
14 Defendants then send these consumers to "authorized dealers" to consummate sales and
15 leases.

16 310. Defendants control various details regarding their dealers' operations
17 through various written agreements, such as: (i) granting each dealer a license to use
18 their respective trademarks and intellectual property; (ii) furnishing each dealer with
19 marketing materials to assist in the sale of their vehicles; (iii) providing training to
20 dealership personnel to assist in their sales activities; and (iv) prohibiting their dealers
21 from engaging in certain practices that otherwise detract from their respective brands or
22 undermine the sale of their respective vehicles, including the Class Vehicles.

23 311. Plaintiffs purchased and/or leased their respective Vehicles from
24 "authorized dealers" with the understanding that these dealers were acting on behalf of
25 Defendants.
26
27
28

1 312. The sole and express purpose that each authorized Kia and Hyundai dealer
2 has when it acquires the vehicles from Kia and Hyundai is to immediately re-sell them
3 to the end-users like Plaintiffs and the Class members.

4 313. Defendants' conduct, and the conduct of their respective dealers, thus
5 create a justifiable belief on the part of Plaintiffs and Class members that the dealers are
6 agents of Kia and/or Hyundai, which the Plaintiffs relied on to their detriment.

7 314. Thus, each Kia and Hyundai dealership operates as the actual and/or
8 apparent agent of the Defendants-manufacturers named herein, which satisfies any
9 privity requirement.

10 315. Moreover, the purchase and/or lease agreements between the Plaintiffs and
11 their respective dealers were entered directly and primarily for Kia and Hyundai's
12 benefit.

13 316. Likewise, any contract whereby Defendants' authorized dealers acquire the
14 Class Vehicles from Defendants to resell to the end-user is also for the express benefit
15 of Plaintiffs and the Class. On information and belief, Defendants' authorized dealers
16 make little money on the actual sale or lease of new vehicles, including the Class
17 Vehicles.

18 317. Plaintiffs and the members of the Class therefore have standing to assert
19 implied warranty claims against Defendants by virtue of their status as intended, third-
20 party beneficiaries of these dealership sales agreements, which further satisfies the
21 privity requirement.

22 318. Privity thus exists between Defendants on the one hand, and the Plaintiffs
23 and the Class on the other by virtue of the express warranties provided through their
24 purchase and/or lease agreements.

25 319. Moreover, the Magnuson-Moss Warranty Act ("MMWA") provides that
26 when a manufacturer offers a written warranty, it may limit the duration of an implied
27 warranty to the duration of an express warranty, but it cannot disclaim implied
28

1 warranties all together. *See* 15 U.S.C. § 2308(a) (“No supplier may disclaim or modify
2 . . . any implied warranty to a consumer with respect to such consumer product if (1)
3 such supplier makes any written warranty to the consumer with respect to such
4 consumer Product”). A manufacturer should not be permitted to avoid this
5 prohibition by claiming an ostensible lack of privity when the manufacturer itself chose
6 its distribution model.

7 320. Imposing a rigid privity requirement in this case would permit Defendants
8 to escape both the letter and spirit of the MMWA through their preferred distribution
9 scheme, one in which the only parties in strict privity that can assert an implied warranty
10 claim are Defendants’ own dealers who would never need to assert the claim in the first
11 instance.

12 321. Consequently, any rigid application of a state law privity requirement
13 would violate the Supremacy Clause and be preempted. *See* U.S. Const. art. VI (“This
14 Constitution, and the Laws of the United States which shall be made in Pursuance
15 thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be
16 bound thereby, any Thing in the Constitution or Laws of any State to the Contrary
17 notwithstanding.”).

18 322. As a direct and proximate result of Defendants’ breach of these implied
19 warranties, Plaintiffs and the Class have suffered damages, injury in fact, and
20 ascertainable loss in an amount to be determined at trial. These damages include, but
21 are not limited to, overpayment for the Class Vehicles, insurance deductibles to get the
22 stolen Class Vehicles repaired, the cost to replace other property stolen in connection
23 with the thefts of Vehicles, the loss of use of the Vehicles, costs associated with the
24 replacement of the totaled Class Vehicles, and/or the diminution in value of the stolen
25 Class Vehicles that were totaled.

26 323. The circumstances described herein caused Defendants’ exclusive or
27 limited remedy to fail its essential purpose, such that the Plaintiffs and the Class may
28

1 seek alternative remedies. Indeed, these warranties have denied the Plaintiffs and the
2 Class the benefit of their respective bargains, which presupposes they were (or are) able
3 to use the Class Vehicles in a meaningful manner without the ever-present risk of them
4 being stolen.

5 324. Further, Kia and Hyundai's exclusion and/or limitation of consequential
6 damages in their New Vehicle Limited Warranties is unconscionable and void for the
7 reasons stated above.

8 325. Accordingly, the Plaintiffs and the Class are entitled to damages flowing
9 from Defendants' breach of their implied warranties, as well as all consequential and
10 incidental damages resulting from this breach.

11 326. Plaintiffs and Class members have complied with all obligations under the
12 warranty, or otherwise have been excused from performance of said obligations as a
13 result of Defendants' conduct described herein. Affording Defendants a reasonable
14 opportunity to cure the breach of written warranties therefore would be unnecessary and
15 futile.

16 **COUNT II**
17 **VIOLATIONS OF MAGNUSON MOSS WARRANTY ACT,**
18 **15 U.S.C. §§ 2301**

19 327. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth
20 herein.

21 328. Plaintiffs bring this claim on behalf of the Nationwide Class.

22 329. Congress enacted the MMWA, 15 U.S.C. §§ 2301, *et seq.*, to address the
23 widespread misuse of merchants' express warranties and to protect consumers from
24 deceptive warranty practices. The MMWA imposes civil liability on any "warrantor"
25 who fails to comply with any obligation under a written or corresponding implied
26 warranty. *Id.* § 2310(d)(1).

27 330. The Class Vehicles are "consumer products" as defined in 15 U.S.C.
28 § 2301(1).

1 331. Plaintiffs and members of the Class are “consumers” as defined in 15
2 U.S.C. § 2301(3).

3 332. Kia and Hyundai are “suppliers” and “warrantors” as those terms are
4 defined in 15 U.S.C. § 2301(4) & (5), respectively

5 333. In connection with the sale and/or lease of the Class Vehicles, Defendants
6 supplied Plaintiffs and the Class with “written warranties” as that term is defined in 15
7 U.S.C. § 2301(6).

8 334. 15 U.S.C. § 2310(d)(1) provides that “a consumer who is damaged by the
9 failure of the supplier, warrantor, or service contractor to comply with any obligation
10 under [the MMWA], or a written warranty, implied warranty, or service contract, may
11 bring suit for damages and other legal and equitable relief in any court of competent
12 jurisdiction in any state.”

13 335. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who
14 is damaged by the failure of a warrantor to comply with an implied warranty.

15 336. Defendants provided Plaintiffs and Class members with an implied
16 warranty of merchantability in connection with the purchase or lease of their vehicles
17 that is an “implied warranty” within the meaning of the Magnuson-Moss Warranty Act,
18 15 U.S.C. § 2301(7). As a part of the implied warranty of merchantability, Defendants
19 warranted that the Vehicles were fit for their ordinary purpose and would pass without
20 objection in the trade as designed, manufactured, and marketed, and were adequately
21 contained, packaged, and labeled.

22 337. Defendants breached their implied warranties, as described herein, and are
23 therefore liable to Plaintiffs under 15 U.S.C. § 2310(d)(1). The Defect rendered the
24 Vehicles unmerchantable and unfit for their ordinary use of driving when they were sold
25 or leased, and at all times thereafter.

26 338. Plaintiffs used their respective Class Vehicles in a manner consistent with
27 their intended use and performed every duty required of them under the terms of the
28

1 warranty, except as may have been excused or prevented by Defendants' conduct or by
2 operation of law.

3 339. Plaintiffs and the Class seek to recover damages resulting directly from
4 Defendants' breach of their implied warranties and their deceitful and unlawful conduct
5 described herein. These damages include, but are not limited to, overpayment for the
6 Class Vehicles, insurance deductibles to get the stolen Class Vehicles repaired, the cost
7 to replace other property stolen in connection with the thefts of their Vehicles, the loss
8 of use of their respective Vehicles, costs associated with the replacement of the totaled
9 Class Vehicles, and/or the diminution in value of a stolen Class Vehicles that were not
10 totaled.

11 340. The MMWA also permits "other legal and equitable" relief. 15 U.S.C.
12 § 2310(d)(1). Plaintiffs seek reformation of Defendants' respective written warranties
13 to comport with their obligations under the MMWA and with consumers' reasonable
14 expectations. Plaintiffs also seek to enjoin Defendants from acting unlawfully as alleged
15 herein.

16 341. Finally, Plaintiffs intend to seek such an award as prevailing consumers at
17 the conclusion of this case. The MMWA provides for an award of costs and expenses,
18 including attorneys' fees, to prevailing consumers in the Court's discretion. 15 U.S.C.
19 § 2310(d)(2).

20 **COUNT III**
21 **UNJUST ENRICHMENT**

22 342. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth
23 herein. This claim is brought under California law on behalf of the Nationwide class.

24 343. This claim is pleaded in the alternative to any contract-based claims
25 asserted by the Plaintiffs noted above. *See* Fed. R. Civ. P. 8(d)(2). Moreover, a claim
26 for unjust enrichment is properly brought where, as here, Defendants contend that their
27 warranties do not cover damages stemming from the Defect.
28

1 344. Plaintiffs bought and/or leased their Vehicles new, directly from a Kia or
2 Hyundai dealership.

3 345. Every year, Defendants make millions of dollars in revenue selling and
4 leasing new Vehicles through their respective dealer networks across the United States.

5 346. Plaintiffs allege upon information and belief that consumers are permitted
6 to buy Vehicles directly from Defendants, but that the proceeds flow through various
7 dealers and/or related companies (e.g., their finance companies) back to Defendants.

8 347. Accordingly, the purchase and lease of new Vehicles confers a direct
9 monetary benefit on Defendants.

10 348. Used Vehicle purchasers also conferred a benefit on Defendants.
11 Defendants profit off the replacement parts needed to service and repair these Vehicles.

12 349. Further, as more used Vehicles stay in the stream of commerce,
13 Defendants' brand awareness rises, which is of substantial value to vehicle
14 manufacturers. Defendants have touted their vehicles as not only reliable and durable,
15 but also as having lower depreciation rates and ownership costs over their useful lives.¹⁰

16 350. Defendants tout these benefits to promote the sale and lease of their new
17 cars for pecuniary benefit.

18 351. Accordingly, Plaintiffs and the Class conferred a benefit upon Defendants,
19 whether directly, indirectly, or through one or more affiliate entities.

20 352. Defendants knew and appreciated the benefits conferred upon them
21 through the sale of the Class Vehicles to Plaintiffs and members of the Class. Many of
22 the Vehicles were financed through Kia Motor Finance or Hyundai Motor Finance

23 353. Notably, federal law mandates that Kia and Hyundai maintain records of
24 first-time purchasers of Class Vehicles, *see* 49 U.S.C. § 30117(b), and remain able to
25

26
27 ¹⁰ Kia, Press Release, *Kia Sweeps Intellichoice CPO Awards*, Kia (Dec. 19, 2019),
28 <https://www.kiamedia.com/us/en/media/pressreleases/15857/kia-sweeps-intellichoice-cpo-awards>.

1 identify the owners of their used cars, including the owners of certain Class Vehicles,
2 to comply with recall notification procedures under applicable law. *See id.*
3 § 30119(d)(1)(A).

4 354. Defendants have long represented to the consuming public that the Class
5 Vehicles are safe, reliable, and durable even though they knew of the Defect. Not only
6 did Defendants fail to equip the Class Vehicles with an industry standard anti-theft
7 device, they failed to comply with FMVSS 114.

8 355. As a result of Defendants' wrongful conduct, unsuspecting consumers like
9 Plaintiffs and the Class overpaid for the Vehicles and incurred additional costs, thereby
10 earning more profit.

11 356. Defendants continued to market the Class Vehicles despite knowing that
12 they were unsafe and susceptible to theft, foisting the cost they would otherwise have
13 been forced to bear through a voluntary recall or otherwise on Plaintiffs and the Class

14 357. Under these circumstances, it would be unjust to allow Defendants to
15 accept and retain the benefits identified herein without paying Plaintiffs and the Class
16 them for their value.

17 **COUNT IV**
18 **VIOLATIONS OF THE CALIFORNIA CONSUMER**
19 **LEGAL REMEDIES ACT**
20 **(CAL. CIV. CODE § 1750, *ET SEQ.*)**

21 358. Plaintiffs incorporate by reference all preceding allegations as though fully
22 set forth herein.

23 359. Plaintiffs bring this claim as part of the Nationwide Class.

24 360. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code
25 § 1750, *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts
26 or practices undertaken by any person in a transaction intended to result or which results
27 in the sale or lease of goods or services to any consumer."

28 361. The Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

1 362. Plaintiffs and the other Class members are “consumers” as defined in Cal.
2 Civ. Code § 1761(d), and Plaintiffs, the other Class members, and Defendants are
3 “persons” as defined in Cal. Civ. Code § 1761(c).

4 363. As alleged herein, Defendants made misleading representations and
5 omissions concerning the benefits, performance, and safety of the Vehicles.

6 364. In purchasing or leasing the Vehicles, Plaintiffs and other Class members
7 were deceived by Defendants failure to disclose its knowledge of the Defect.

8 365. Defendants’ conduct as described herein was and is in violation of the
9 CLRA. Defendants’ conduct violates at least the following enumerated CLRA
10 provisions:

- 11 i. Cal. Civ. Code § 1770(a)(5): Representing that goods have
12 sponsorship, approval, characteristics, uses, benefits, or quantities
13 that they do not have.
- 14 ii. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a
15 particular standard, quality, or grade if they are of another.
- 16 iii. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to
17 sell them as advertised.
- 18 iv. Cal. Civ. Code § 1770(a)(16): Representing that goods have been
19 supplied in accordance with a previous representation when they
20 have not.

21 366. Defendants intentionally and knowingly misrepresented and omitted
22 material facts regarding the Vehicles with an intent to mislead Plaintiffs and Class
23 members.

24 367. In purchasing or leasing the Vehicles, Plaintiffs and other Class members
25 were deceived by Defendants’ failure to disclose their knowledge of the Defect.
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1 368. Plaintiffs and other Class members had no way of knowing Defendants'
2 representations were false, misleading, and incomplete or knowing the true nature of the
3 Defect.

4 369. As alleged herein, Defendants engaged in a pattern of deception and public
5 silence in the face of a known Defect. Plaintiffs and other Class members did not, and
6 could not, unravel Defendants' deception on their own.

7 370. Defendants knew or should have known their conduct violated the CLRA.

8 371. Defendants owed Plaintiffs and the Class members a duty to disclose the
9 truth about the Defect because the defect created a safety hazard and Defendants:

- 10 i. Possessed exclusive knowledge of the Defect,
11 ii. Intentionally concealed the foregoing from Plaintiffs and Class
12 members; and/or
13 iii. Made incomplete representations in advertisements and on its
14 website, failing to warn the public of the Defect.

15 372. Defendants had a duty to disclose that the Vehicles were fundamentally
16 flawed as described herein, because the Defect created a safety hazard, and Plaintiffs
17 and the other Class members relied on Defendants' material misrepresentations and
18 omissions regarding the features of the Vehicles.

19 373. Defendants' conduct proximately caused injuries to Plaintiffs and the other
20 Class members that purchased the Vehicles and suffered harm as alleged herein.

21 374. Plaintiffs and the other Class members were injured and suffered
22 ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of
23 Defendants' conduct in that Plaintiffs and the other Class members incurred costs,
24 including overpaying for their Vehicles that have suffered a diminution in value.

25 375. Defendants' violations cause continuing injuries to Plaintiffs and other
26 Class members.

1 376. Defendants’ unlawful acts and practices complained of herein affect the
2 public interest.

3 377. Defendants knew of the Defect, and that the Vehicles were materially
4 compromised by it.

5 378. The facts concealed and omitted by Defendants from Plaintiffs and other
6 Class members are material in that a reasonable consumer would have considered them
7 to be important in deciding whether to purchase a Vehicle or pay a lower price. Had
8 Plaintiffs and the other Class members known about the defective nature of the Vehicles,
9 they would not have purchased the Vehicles or would not have paid the prices they paid.

10 379. Plaintiffs’ and the other Class members’ injuries were proximately caused
11 by Defendants’ unlawful and deceptive business practices.

12 380. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs seek an order enjoining
13 Defendants from engaging in the methods, acts, or practices alleged herein, including
14 further concealment of the Defect.

15 381. Plaintiffs sent out a notice letter on November 14, 2022.

16 382. Pursuant to Cal. Civ. Code § 1782, if Defendant does not rectify its conduct
17 within 30 days, Plaintiffs intend to amend this Complaint to add claims under the Cal.
18 Civ. Code for:

- 19 i. Actual damages;
 - 20 ii. Restitution of money to Plaintiffs and Class members, and the
21 general public;
 - 22 iii. Punitive damages;
 - 23 iv. An additional award of up to \$5,000 to each Plaintiffs and any Class
24 member who is a “senior citizen”;
 - 25 v. Attorneys’ fees and costs; and
 - 26 vi. Other relief that this Court deems proper.
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COUNT V
VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*)

383. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

384. Plaintiffs bring this claim on behalf of the Nationwide Class.

385. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising."

386. Defendants' conduct, as described herein, was and is in violation of the UCL. Defendants' conduct violates the UCL in at least the following ways:

- i. By failing to disclose the Defect;
- ii. By selling and leasing Vehicles that suffer from the Defect;
- iii. By knowingly and intentionally concealing from Plaintiffs and the other Class members the Defect;
- iv. By marketing Vehicles as safe, convenient, and defect free, with cutting edge technology, all while knowing of the Defect; and
- v. By violating other California laws, including California consumer protection laws.

387. Defendants intentionally and knowingly misrepresented and omitted material facts regarding the Vehicles with intent to mislead Plaintiffs and the other Class members.

388. In purchasing or leasing the Vehicles, Plaintiffs and the other Class members were deceived by Defendants' failure to disclose the Defect.

389. Plaintiffs and the other Class members reasonably relied upon Defendants' false misrepresentations and omissions. They had no way of knowing that Defendants' representations were false, misleading, and incomplete. As alleged herein, Defendants

1 engaged in a pattern of deception and public silence in the face of a known defect.
2 Plaintiffs and the other Class members did not, and could not, unravel Defendants'
3 deception on their own.

4 390. Defendants knew or should have known that its conduct violated the UCL.

5 391. Defendants owed Plaintiffs and the other Class members a duty to disclose
6 the truth about the Defect because the Defect created a safety hazard and Defendants:

- 7 i. Possessed exclusive knowledge of the Defect;
- 8 ii. Intentionally concealed the foregoing from Plaintiffs and the
9 other Class members; and/or
- 10 iii. Made incomplete representations by failing to warn the public
11 or to publicly admit the Defect.

12 392. Defendants had a duty to disclose the Defect, because Plaintiffs and the
13 other Class members relied on Defendants' material misrepresentations and omissions.

14 393. Defendants' conduct proximately caused injuries to Plaintiffs and the other
15 Class members that purchased the Vehicles and suffered harm as alleged herein.

16 394. Plaintiffs and the other Class members were injured and suffered
17 ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of
18 Defendants' conduct in that Plaintiffs and the other Class members incurred costs,
19 including overpaying for their Vehicles that have suffered a diminution in value.

20 395. Defendants' violations cause continuing injuries to Plaintiffs and Class
21 members.

22 396. Defendants' unlawful acts and practices complained of herein affect the
23 public interest.

24 397. Defendants' misrepresentations and omissions alleged herein caused
25 Plaintiffs and the other Class members to make their purchases of their Vehicles. Absent
26 those misrepresentations and omissions, Plaintiffs and the other Class members would
27 not have purchased these Vehicles, would not have purchased these Vehicles at the
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1 prices they paid, and/or would have purchased less expensive alternative vehicles that
2 did not contain the Defect and did not fail to live up to industry standards.

3 398. Accordingly, Plaintiffs and the other Class members have suffered injury-
4 in-fact, including lost money or property, as a result of Defendants' misrepresentations
5 and omissions.

6 399. Plaintiffs request that this Court enter such orders or judgments as may be
7 necessary to restore to Plaintiffs and Class members any money Defendants acquired
8 by unfair competition, including restitution and/or restitutionary disgorgement, as
9 provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such
10 other relief as may be appropriate.

11 **COUNT VI**
12 **FRAUD BY CONCEALMENT**
(BASED ON CALIFORNIA LAW)

13 400. Plaintiffs incorporate by reference all preceding allegations as though fully
14 set forth herein.

15 401. Plaintiffs bring this claim on behalf of the Nationwide Class.

16 402. Defendants intentionally concealed the Defect.

17 403. Defendants further affirmatively misrepresented to Plaintiffs in advertising
18 and other forms of communication, including standard and uniform material provided
19 with each car and on its website, that the Vehicles they were selling had no significant
20 defects, that the Vehicles were reliable, and would perform and operate properly.

21 404. Defendants knew about the Defect when these representations were made.

22 405. The Vehicles purchased by Plaintiffs and the other Class members
23 contained the Defect.

24 406. Defendants had a duty to disclose Defect as alleged herein, because the
25 Defect created a safety hazard and Plaintiffs and the other Class members relied on
26 Defendants' material representations.

1 407. As alleged herein, at all relevant times, Defendants have held out the
2 Vehicles to be free from defects. Defendants touted and continue to tout the many
3 benefits and advantages of the Vehicles, but nonetheless failed to disclose important
4 facts related to the Defect. This made Defendants' other disclosures about the Vehicles
5 deceptive.

6 408. The truth about the Defect was known only to Defendants; Plaintiffs and
7 the other Class members did not know of these facts and Defendants actively concealed
8 these facts from Plaintiffs and Class members.

9 409. Plaintiffs and the other Class members reasonably relied upon Defendants'
10 deception. They had no way of knowing that Defendants' representations were false,
11 misleading, or incomplete. As consumers, Plaintiffs and Class members did not, and
12 could not, unravel Defendants' deception on their own. Rather, Defendants intended to
13 deceive Plaintiffs and Class members by concealing the true facts about the Vehicles.

14 410. Defendants' false representations and omissions were material to
15 consumers because they concerned qualities of the Vehicles that played a significant
16 role in the value of the Vehicles.

17 411. Defendants had a duty to disclose the Defect and violations with respect to
18 the Vehicles because details of the true facts were known and/or accessible only to
19 Defendants, because Defendants had exclusive knowledge as to such facts, and because
20 Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs
21 or Class members.

22 412. Defendants also had a duty to disclose because it made general affirmative
23 representations about the technological and safety innovations included with their
24 Vehicles, without telling consumers that the Vehicles had a fundamental Defect that
25 would affect the safety, quality, and performance of the Vehicle.

26 413. Defendants' disclosures were misleading, deceptive, and incomplete
27 because they failed to inform consumers of the additional facts regarding the Defect as
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1 set forth herein. These omitted and concealed facts were material because they directly
2 impact the value of the Vehicles purchased by Plaintiffs and Class members.

3 414. Defendants have still not made full and adequate disclosures and continues
4 to defraud Plaintiffs and Class members by concealing material information regarding
5 the Defect.

6 415. Plaintiffs and Class members were unaware of the omitted material facts
7 referenced herein, and they would not have acted as they did if they had known of the
8 concealed and/or suppressed facts, in that they would not have purchased or paid as
9 much for cars with faulty technology, and/or would have taken other affirmative steps
10 in light of the information concealed from them. Plaintiffs' and Class members' actions
11 were justified. Defendants were in exclusive control of the material facts, and such facts
12 were not generally known to the public, Plaintiffs, or Class members.

13 416. Because of the concealment and/or suppression of facts, Plaintiffs and
14 Class members sustained damage because they own or lease Vehicles that are
15 diminished in value as a result of Defendants' concealment of the true quality of the
16 Vehicles' security systems. Had Plaintiffs and Class members been aware of the Defect
17 in the Vehicles, and the Defendants' disregard for the truth, Plaintiffs and Class
18 members would have paid less for their Vehicles or would not have purchased or leased
19 them at all.

20 417. The value of Plaintiffs' and Class members' Vehicles have diminished as
21 a result of Defendants' fraudulent concealment of the Defect, which has made any
22 reasonable consumer reluctant to purchase any of the Vehicles, let alone pay what
23 otherwise would have been fair market value for the Vehicles.

24 418. Accordingly, Defendants are liable to Plaintiffs and Class members for
25 damages in an amount to be proven at trial.

26 419. Defendants' acts were done wantonly, maliciously, oppressively,
27 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class
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1 members' rights and the representations that Defendants made to them, in order to
2 enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in
3 an amount sufficient to deter such conduct in the future, which amount is to be
4 determined according to proof.

5 **COUNT VII**
6 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
7 **(CAL. COM. CODE § 2314)**

8 420. Plaintiffs incorporate by reference all preceding allegations as though fully
9 set forth herein.

10 421. Plaintiffs bring this claim on behalf of the Nationwide Class.

11 422. Defendants are and were at all relevant times merchants with respect to
12 motor vehicles under Cal. Com. Code § 2104.

13 423. A warranty that the Vehicles were in merchantable condition was implied
14 by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

15 424. Defendants marketed the Vehicles as safe and reliable vehicles. Such
16 representations formed the basis of the bargain in Plaintiffs' and Class members'
17 decisions to purchase or lease the Vehicles.

18 425. Plaintiffs and other Class members purchased or leased the Vehicles from
19 Defendants, through Defendants' authorized agents for retail sales, through private
20 sellers, or were otherwise expected to be the eventual purchasers of the Vehicles when
21 bought from a third party. At all relevant times, Defendants were the manufacturers,
22 distributors, warrantors, and/or sellers of the Vehicles.

23 426. Defendants knew or had reason to know of the specific use for which the
24 Vehicles were purchased or leased.

25 427. Because of the Defect, the Vehicles were not in merchantable condition
26 when sold and are not fit for the ordinary purpose of providing safe and reliable
27 transportation.
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1 428. Defendants knew about the Defect, allowing Defendants to cure their
2 breach of its warranty if they chose.

3 429. Defendants' attempt to disclaim or limit the implied warranty of
4 merchantability vis-à-vis consumers is unconscionable and unenforceable here.
5 Specifically, Defendants' warranty limitation is unenforceable because they knowingly
6 sold or leased a defective product without informing consumers about the Defect. The
7 time limits contained in Defendants' warranty periods were also unconscionable and
8 inadequate to protect Plaintiffs and other Class members. Among other things, Plaintiffs
9 and other Class members had no meaningful choice in determining these time
10 limitations, the terms of which unreasonably favored Defendants. A gross disparity in
11 bargaining power existed between Defendants and other Class members, and
12 Defendants knew of the defect at the time of sale.

13 430. Plaintiffs and Class members have complied with all obligations under the
14 warranty, or otherwise have been excused from performance of said obligations as a
15 result of Defendants' conduct described herein. Affording Defendants a reasonable
16 opportunity to cure the breach of written warranties therefore would be unnecessary and
17 futile.

18 431. Accordingly, Defendants are liable to Plaintiffs and Class members for
19 damages in an amount to be proven at trial.

20 **B. Claims Brought on Behalf of Alabama Class**

21 **COUNT VIII**
22 **VIOLATION OF THE ALABAMA DECEPTIVE TRADE PRACTICES ACT**
(ALA. CODE § 8-19-1 ET SEQ.)

23 432. Plaintiff Lucas ("Plaintiff" for purposes of all Alabama Class counts)
24 hereby incorporates by reference the allegations contained in the preceding paragraphs
25 of this complaint.

26 433. Plaintiff brings this Count on behalf of the Alabama Class.
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1 434. The Alabama Deceptive Trade Practices Act declares several specific
2 actions to be unlawful, including: “(11) Making a false or misleading statement of fact
3 concerning the reasons for, existence of, or amounts of, price reductions”; and “(27)
4 engaging in any other unconscionable, false, misleading, or deceptive act or practice in
5 the conduct of trade or commerce.” Ala. Code § 8-19-5.

6 435. Plaintiff and Alabama Class members are “consumers” within the meaning
7 of Ala. Code § 8-19-3(2).

8 436. Plaintiff, Alabama Class members, and Defendant Kia are “persons”
9 within the meaning of Ala. Code § 8-19-3(3).

10 437. Defendant Kia was and is engaged in “trade or commerce” within the
11 meaning of Ala. Code § 8-19-3(8).

12 438. Defendant Kia’s conduct, as set forth above, occurred in the conduct of
13 trade or commerce. In the course of its business, Defendant Kia concealed and
14 suppressed material facts concerning the Vehicles. These acts were unconscionable,
15 false, misleading, and/or deceptive within the meaning of Ala. Code § 8-19-5.

16 439. Plaintiff and the Alabama Class were injured as a result of Defendant Kia’s
17 conduct. Plaintiff and the Alabama Class overpaid for their Vehicles and did not receive
18 the benefit of their bargain, and have suffered damages as a result.

19 440. Defendant Kia’s conduct proximately caused the injuries to Plaintiff and
20 the Alabama Class.

21 441. Pursuant to Alabama Code § 8-19-10, Plaintiff seeks monetary relief
22 against Defendant Kia measured as the greater of (a) actual damages in an amount to be
23 determined at trial and (b) statutory damages in the amount of \$100 for each Plaintiff.

24 442. Plaintiff also seeks an order enjoining Defendant Kia’s unfair, unlawful,
25 and/or deceptive practices, attorneys’ fees, and any other just and proper relief available
26 under Ala. Code § 8-19-1, *et seq.*

COUNT IX
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(ALA. CODE § 7-2-314)

443. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

444. Plaintiff brings this Count on behalf of the Alabama Class.

445. Defendant Kia is and was at all relevant times a merchant with respect to motor vehicles.

446. A warranty that the Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to Ala. Code § 7-2-314.

447. These Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Vehicles are inherently defective in that their security Defect renders them unsafe, inconvenient, and imperfect such that Plaintiff and Alabama Class members would not have purchased the Vehicles had they known of the Defect.

448. Defendant Kia knew about the security Defect at the time of purchase, allowing it an opportunity to cure its breach of warranty if it chose.

449. Defendant Kia was provided notice of the Defect by, among other things, numerous complaints about it, including the instant Complaint, and by customer complaints, letters, emails, and other communications from Class members and from dealers and other repair facilities.

450. As a direct and proximate result of Defendant Kia's breach of the implied warranty of merchantability, Plaintiff and the other Alabama Class members have been damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution, and/or diminution of value.

C. Claims Brought on Behalf of the Arkansas Class

**COUNT X
VIOLATIONS OF THE DECEPTIVE TRADE PRACTICE ACT
(ARK. CODE ANN. § 4-88-101, *ET SEQ.*)**

451. Plaintiff Bennett (“Plaintiff” for purposes of all Arkansas Class Counts) incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

452. Plaintiff brings this claim on behalf of the Arkansas Class.

453. The Arkansas Deceptive Trade Practices Act (“Arkansas DTPA”) prohibits “[d]eceptive and unconscionable trade practices,” which include, but are not limited to, a list of enumerated items, including “[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]” Ark. Code Ann. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in connection with the sale or advertisement of any goods: “(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission.” Ark. Code Ann. § 4-88-108.

454. Defendant Kia and Plaintiff are “persons” within the meaning of the Arkansas DTPA, Ark. Code Ann. § 4-88-102(5).

455. The Class Vehicles are “goods” within the meaning of Ark. Code Ann. § 4-88-102(4).

456. Defendant Kia violated the Arkansas DTPA by concealing and failing to disclose the Defect. Defendant Kia had an ongoing duty to Plaintiff and the Arkansas Class to refrain from unfair and deceptive practices under the Arkansas DTPA in the course of its business.

457. Plaintiff and the Arkansas Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendant Kia’s concealment, misrepresentations, and/or failure to disclose material information.

1 and other communications from Class members and from dealers and other repair
2 facilities.

3 467. As a direct and proximate result of Defendant Kia's breach of the implied
4 warranty of merchantability, Plaintiff and the other Arkansas Class members have been
5 damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-
6 bargain damages, restitution, and/or diminution of value.

7 **D. Claims Brought on Behalf of California Class**

8 **COUNT XII**
9 **VIOLATIONS OF THE CALIFORNIA CONSUMER**
10 **LEGAL REMEDIES ACT**
11 **(CAL. CIV. CODE § 1750, *ET SEQ.*)**

12 468. Plaintiffs Winston, Poblete Taylor, Strong, and Helsel ("Plaintiffs" for
13 purposes of all California Class counts) incorporate by reference all preceding
14 allegations as though fully set forth herein.

15 469. Plaintiffs bring this claim as part of the California Class.

16 470. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code
17 § 1750, *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts
18 or practices undertaken by any person in a transaction intended to result or which results
19 in the sale or lease of goods or services to any consumer."

20 471. The Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

21 472. Plaintiffs and the other Class members are "consumers" as defined in Cal.
22 Civ. Code § 1761(d), and Plaintiffs, the other Class members, and Defendants are
23 "persons" as defined in Cal. Civ. Code § 1761(c).

24 473. As alleged herein, Defendants made misleading representations and
25 omissions concerning the benefits, performance, and safety of the Vehicles.

26 474. In purchasing or leasing the Vehicles, Plaintiffs and other Class members
27 were deceived by Defendants' failure to disclose their knowledge of the Defect.
28

1 475. Defendants' conduct as described herein was and is in violation of the
2 CLRA. Defendants' conduct violates at least the following enumerated CLRA
3 provisions:

- 4 i. Cal. Civ. Code § 1770(a)(5): Representing that goods have
5 sponsorship, approval, characteristics, uses, benefits, or quantities
6 that they do not have.
- 7 ii. Cal Civ. Code § 1770(a)(7): Representing that goods are of a
8 particular standard, quality, or grade if they are of another.
- 9 iii. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to
10 sell them as advertised.
- 11 iv. Cal Civ. Code § 1770(a)(16): Representing that goods have been
12 supplied in accordance with a previous representation when they
13 have not.

14 476. Defendants intentionally and knowingly misrepresented and omitted
15 material facts regarding the Vehicles with an intent to mislead Plaintiffs and Class
16 members.

17 477. In purchasing or leasing the Vehicles, Plaintiffs and other Class members
18 were deceived by Defendants' failure to disclose their knowledge of the Defect.

19 478. Plaintiffs and other Class members had no way of knowing Defendants'
20 representations were false, misleading, and incomplete or knowing the true nature of the
21 Defect.

22 479. As alleged herein, Defendants engaged in a pattern of deception and public
23 silence in the face of a known Defect. Plaintiffs and other Class members did not, and
24 could not, unravel Defendants' deception on their own.

25 480. Defendants knew or should have known their conduct violated the CLRA.

26 481. Defendants owed Plaintiffs and the Class members a duty to disclose the
27 truth about the Defect because the defect created a safety hazard and Defendants:
28

- i. Possessed exclusive knowledge of the Defect,
- ii. Intentionally concealed the foregoing from Plaintiffs and Class members; and/or
- iii. Made incomplete representations in advertisements and on its website, failing to warn the public of the Defect.

482. Defendants had a duty to disclose that the Vehicles were fundamentally flawed as described herein, because the Defect created a safety hazard, and Plaintiffs and the other Class members relied on Defendants' material misrepresentations and omissions regarding the features of the Vehicles.

483. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class members that purchased the Vehicles and suffered harm as alleged herein.

484. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendants' conduct in that Plaintiffs and the other Class members incurred costs, including overpaying for their Vehicles that have suffered a diminution in value.

485. Defendants' violations cause continuing injuries to Plaintiffs and other Class members.

486. Defendants' unlawful acts and practices complained of herein affect the public interest.

487. Defendants knew of the Defect, and that the Vehicles were materially compromised by it.

488. The facts concealed and omitted by Defendants from Plaintiffs and other Class members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase a Vehicle or pay a lower price. Had Plaintiffs and the other Class members known about the defective nature of the Vehicles, they would not have purchased the Vehicles or would not have paid the prices they paid.

489. Plaintiffs' and the other Class members' injuries were proximately caused by Defendants' unlawful and deceptive business practices.

490. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs seek an order enjoining Defendants from engaging in the methods, acts, or practices alleged herein, including further concealment of the Defect.

491. Plaintiffs sent out a notice letter on November 14, 2022.

492. Pursuant to Cal. Civ. Code § 1782, if Defendants do not rectify their conduct within 30 days, Plaintiffs intend to amend this Complaint to add claims under the Cal. Civ. Code for:

- i. Actual damages;
- ii. Restitution of money to Plaintiffs and Class members, and the general public;
- iii. Punitive damages;
- iv. An additional award of up to \$5,000 to each Plaintiffs and any Class member who is a “senior citizen”;
- v. Attorneys’ fees and costs; and
- vi. Other relief that this Court deems proper.

COUNT XIII
VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*)

493. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

494. Plaintiffs bring this claim on behalf of the California Class.

495. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising.”

1 496. Defendants' conduct, as described herein, was and is in violation of the
2 UCL. Defendants conduct violates the UCL in at least the following ways:

- 3 i. By failing to disclose that the Defect;
4 ii. By selling and leasing Vehicles that suffer from the Defect;
5 iii. By knowingly and intentionally concealing from Plaintiffs and the
6 other Class members the Defect;
7 iv. By marketing Vehicles as safe, convenient, and defect free, with
8 cutting edge technology, all while knowing of the Defect; and
9 v. By violating other California laws, including California consumer
10 protection laws.

11 497. Defendants intentionally and knowingly misrepresented and omitted
12 material facts regarding the Vehicles with intent to mislead Plaintiffs and the other Class
13 members.

14 498. In purchasing or leasing the Vehicles, Plaintiffs and the other Class
15 members were deceived by Defendants' failure to disclose the Defect.

16 499. Plaintiffs and the other Class members reasonably relied upon Defendants'
17 false misrepresentations and omissions. They had no way of knowing that Defendants'
18 representations were false, misleading, and incomplete. As alleged herein, Defendants
19 engaged in a pattern of deception and public silence in the face of a known defect.
20 Plaintiffs and the other Class members did not, and could not, unravel Defendants'
21 deception on their own.

22 500. Defendants knew or should have known that its conduct violated the UCL.

23 501. Defendants owed Plaintiffs and the other Class members a duty to disclose
24 the truth about the Defect because the Defect created a safety hazard and Defendants:

- 25 i. Possessed exclusive knowledge of the Defect;
26 ii. Intentionally concealed the foregoing from Plaintiffs and the
27 other Class members; and/or
28

1 iii. Made incomplete representations by failing to warn the public
2 or to publicly admit the Defect.

3 502. Defendants had a duty to disclose the Defect, because Plaintiffs and the
4 other Class members relied on Defendants' material misrepresentations and omissions.

5 503. Defendants' conduct proximately caused injuries to Plaintiffs and the other
6 Class members that purchased the Vehicles and suffered harm as alleged herein.

7 504. Plaintiffs and the other Class members were injured and suffered
8 ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of
9 Defendants' conduct in that Plaintiffs and the other Class members incurred costs,
10 including overpaying for their Vehicles that have suffered a diminution in value.

11 505. Defendants' violations cause continuing injuries to Plaintiffs and Class
12 members.

13 506. Defendants' unlawful acts and practices complained of herein affect the
14 public interest.

15 507. Defendants' misrepresentations and omissions alleged herein caused
16 Plaintiffs and the other Class members to make their purchases of their Vehicles. Absent
17 those misrepresentations and omissions, Plaintiffs and the other Class members would
18 not have purchased these Vehicles, would not have purchased these Vehicles at the
19 prices they paid, and/or would have purchased less expensive alternative vehicles that
20 did not contain the Defect and did not fail to live up to industry standards.

21 508. Accordingly, Plaintiffs and the other Class members have suffered injury-
22 in-fact, including lost money or property, as a result of Defendants' misrepresentations
23 and omissions.

24 509. Plaintiffs request that this Court enter such orders or judgments as may be
25 necessary to restore to Plaintiffs and Class members any money Defendants acquired
26 by unfair competition, including restitution and/or restitutionary disgorgement, as
27
28

1 provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such
2 other relief as may be appropriate.

3 **COUNT XIV**
4 **FRAUD BY CONCEALMENT**
5 **(BASED ON CALIFORNIA LAW)**

6 510. Plaintiffs incorporate by reference all preceding allegations as though fully
7 set forth herein.

8 511. Plaintiffs bring this claim on behalf of the California Class.

9 512. Defendants intentionally concealed the Defect.

10 513. Defendants further affirmatively misrepresented to Plaintiffs in advertising
11 and other forms of communication, including standard and uniform material provided
12 with each car and on its website, that the Vehicles they were selling had no significant
13 defects, that the Vehicles were reliable, and would perform and operate properly.

14 514. Defendants knew about the Defect when these representations were made.

15 515. The Vehicles purchased by Plaintiffs and the other Class members
16 contained the Defect.

17 516. Defendants had a duty to disclose Defect as alleged herein, because the
18 Defect created a safety hazard and Plaintiffs and the other Class members relied on
19 Defendants' material representations.

20 517. As alleged herein, at all relevant times, Defendants have held out the
21 Vehicles to be free from defects. Defendants touted and continue to tout the many
22 benefits and advantages of the Vehicles, but nonetheless failed to disclose important
23 facts related to the Defect. This made Defendants' other disclosures about the Vehicles
24 deceptive.

25 518. The truth about the Defect was known only to Defendants; Plaintiffs and
26 the other Class members did not know of these facts and Defendants actively concealed
27 these facts from Plaintiffs and Class members.
28

1 519. Plaintiffs and the other Class members reasonably relied upon Defendants’
2 deception. They had no way of knowing that Defendants’ representations were false,
3 misleading, or incomplete. As consumers, Plaintiffs and Class members did not, and
4 could not, unravel Defendants’ deception on their own. Rather, Defendants intended to
5 deceive Plaintiffs and Class members by concealing the true facts about the Vehicles.

6 520. Defendants’ false representations and omissions were material to
7 consumers because they concerned qualities of the Vehicles that played a significant
8 role in the value of the Vehicles.

9 521. Defendants had a duty to disclose the Defect and violations with respect to
10 the Vehicles because details of the true facts were known and/or accessible only to
11 Defendants, because Defendants had exclusive knowledge as to such facts, and because
12 Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs
13 or Class members.

14 522. Defendants also had a duty to disclose because it made general affirmative
15 representations about the technological and safety innovations included with their
16 Vehicles, without telling consumers that the Vehicles had a fundamental Defect that
17 would affect the safety, quality, and performance of the Vehicle.

18 523. Defendants’ disclosures were misleading, deceptive, and incomplete
19 because they failed to inform consumers of the additional facts regarding the Defect as
20 set forth herein. These omitted and concealed facts were material because they directly
21 impact the value of the Vehicles purchased by Plaintiffs and Class members.

22 524. Defendants have still not made full and adequate disclosures and continues
23 to defraud Plaintiffs and Class members by concealing material information regarding
24 the Defect.

25 525. Plaintiffs and Class members were unaware of the omitted material facts
26 referenced herein, and they would not have acted as they did if they had known of the
27 concealed and/or suppressed facts, in that they would not have purchased or paid as
28

1 much for cars with faulty technology, and/or would have taken other affirmative steps
2 in light of the information concealed from them. Plaintiffs' and Class members' actions
3 were justified. Defendants were in exclusive control of the material facts, and such facts
4 were not generally known to the public, Plaintiffs, or Class members.

5 526. Because of the concealment and/or suppression of facts, Plaintiffs and
6 Class members sustained damage because they own or lease Vehicles that are
7 diminished in value as a result of Defendants' concealment of the true quality of the
8 Vehicles' security systems. Had Plaintiffs and Class members been aware of the Defect
9 in the Vehicles, and the Defendants' disregard for the truth, Plaintiffs and Class
10 members would have paid less for their Vehicles or would not have purchased or leased
11 them at all.

12 527. The value of Plaintiffs' and Class members' Vehicles have diminished as
13 a result of Defendants' fraudulent concealment of the Defect, which has made any
14 reasonable consumer reluctant to purchase any of the Vehicles, let alone pay what
15 otherwise would have been fair market value for the Vehicles.

16 528. Accordingly, Defendants are liable to Plaintiffs and Class members for
17 damages in an amount to be proven at trial.

18 529. Defendants' acts were done wantonly, maliciously, oppressively,
19 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class
20 members' rights and the representations that Defendants made to them, in order to
21 enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in
22 an amount sufficient to deter such conduct in the future, which amount is to be
23 determined according to proof.

24 **COUNT XV**
25 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
(CAL. COM. CODE § 2314)

26 530. Plaintiffs incorporate by reference all preceding allegations as though fully
27 set forth herein.
28

1 531. Plaintiffs bring this claim on behalf of the California Class.

2 532. Defendants are and were at all relevant times merchants with respect to
3 motor vehicles under Cal. Com. Code § 2104.

4 533. A warranty that the Vehicles were in merchantable condition was implied
5 by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

6 534. Defendants marketed the Vehicles as safe and reliable vehicles. Such
7 representations formed the basis of the bargain in Plaintiffs' and Class members'
8 decisions to purchase or lease the Vehicles.

9 535. Plaintiffs and other Class members purchased or leased the Vehicles from
10 Defendants, through Defendants' authorized agents for retail sales, through private
11 sellers, or were otherwise expected to be the eventual purchasers of the Vehicles when
12 bought from a third party. At all relevant times, Defendants were the manufacturers,
13 distributors, warrantors, and/or sellers of the Vehicles.

14 536. Defendants knew or had reason to know of the specific use for which the
15 Vehicles were purchased or leased.

16 537. Because of the Defect, the Vehicles were not in merchantable condition
17 when sold and are not fit for the ordinary purpose of providing safe and reliable
18 transportation.

19 538. Defendants knew about the Defect, allowing Defendants to cure their
20 breach of their warranty if they chose.

21 539. Defendants' attempt to disclaim or limit the implied warranty of
22 merchantability vis-à-vis consumers is unconscionable and unenforceable here.
23 Specifically, Defendants' warranty limitation is unenforceable because they knowingly
24 sold or leased a defective product without informing consumers about the Defect. The
25 time limits contained in Defendants' warranty periods were also unconscionable and
26 inadequate to protect Plaintiffs and other Class members. Among other things, Plaintiffs
27 and other Class members had no meaningful choice in determining these time
28

1 limitations, the terms of which unreasonably favored Defendants. A gross disparity in
 2 bargaining power existed between Defendants and other Class members, and
 3 Defendants knew of the defect at the time of sale.

4 540. Plaintiffs and Class members have complied with all obligations under the
 5 warranty, or otherwise have been excused from performance of said obligations as a
 6 result of Defendants' conduct described herein. Affording Defendants a reasonable
 7 opportunity to cure the breach of written warranties therefore would be unnecessary and
 8 futile.

9 541. Accordingly, Defendants are liable to Plaintiffs and Class members for
 10 damages in an amount to be proven at trial.

11 **E. Claims Brought on Behalf of Delaware Class**

12 **COUNT XVI**
 13 **VIOLATION OF THE DELAWARE CONSUMER FRAUD ACT**
 14 **(6 DEL. CODE § 2513, *ET SEQ.*)**

15 542. Plaintiff McKnight ("Plaintiff" for purposes of all Delaware Class Counts)
 16 incorporates by reference the allegations contained in the preceding paragraphs of this
 17 complaint.

18 543. Plaintiff brings this claim on behalf of the Delaware Class.

19 544. The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the "act,
 20 use or employment by any person of any deception, fraud, false pretense, false promise,
 21 misrepresentation, or the concealment, suppression, or omission of any material fact
 22 with intent that others rely upon such concealment, suppression or omission, in
 23 connection with the sale, lease or advertisement of any merchandise, whether or not any
 24 person has in fact been misled, deceived or damaged thereby." 6 Del. Code § 2513(a).

25 545. Defendant Kia is a "person" within the meaning of 6 Del. Code § 2511(7).

26 546. Defendant Kia violated the Delaware CFA by concealing and failing to
 27 disclose the Defect. Defendant had an ongoing duty to Plaintiffs and the Delaware Class
 28

1 to refrain from unfair and deceptive practices under the Delaware CFA in the course of
2 its business.

3 547. Plaintiffs and the Delaware Class suffered ascertainable loss and actual
4 damages as a direct and proximate result of Defendant Kia's concealment,
5 misrepresentations, and/or failure to disclose material information.

6 548. Plaintiffs seek damages under the Delaware CFA for injury resulting from
7 the direct and natural consequences of Defendant Kia's unlawful conduct. *See, e.g.,*
8 *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Plaintiffs also seek
9 an order enjoining Defendant Kia's unfair, unlawful, and/or deceptive practices,
10 declaratory relief, attorneys' fees, and any other just and proper relief available under
11 the Delaware CFA.

12 549. Defendant Kia engaged in gross, oppressive, or aggravated conduct
13 justifying the imposition of punitive damages.

14 **COUNT XVII**
15 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
16 **(6 DEL. CODE § 2-314)**

17 550. Plaintiff incorporates by reference all preceding allegations as though fully
18 set forth herein.

19 551. Plaintiff brings this claim on behalf of the Delaware Class.

20 552. Defendant Kia was at all relevant times a merchant with respect to motor
21 vehicles within the meaning of 6 Del. Code § 2-104(1).

22 553. A warranty that the Vehicles were in merchantable condition and fit for the
23 ordinary purpose for which vehicles are used is implied by law pursuant to Under 6 Del.
24 Code § 2-314.

25 554. These Vehicles, when sold and at all times thereafter, were not in
26 merchantable condition and are not fit for the ordinary purpose for which cars are used.
27 Specifically, the Vehicles are defective in that the defects in that the Defect rendered
28

1 them unsafe, inconvenient, and imperfect such that Plaintiff and the other Delaware
2 Class members would not have purchased the Vehicles had they known of the Defect.

3 555. Defendant Kia knew about the Defect at the time of purchase, allowing it
4 to cure its breach of warranty if it chose.

5 556. Defendant Kia was provided notice of these issues by numerous complaints
6 against it, including the instant Complaint, and by customer complaints, letters, emails,
7 and other communications from Class members and from dealers and other repair
8 facilities.

9 557. As a direct and proximate result of Defendant Kia's breach of the implied
10 warranty of merchantability, Plaintiff and the other Delaware Class members have been
11 damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-
12 bargain damages, restitution, and/or diminution of value.

13 **F. Claims Brought on Behalf of Georgia Class**

14 **COUNT XVIII** 15 **VIOLATION OF THE GEORGIA FAIR BUSINESS PRACTICES ACT** 16 (GA. CODE ANN. § 10-1-390 ET SEQ.)

17 558. Plaintiff Helmly ("Plaintiff," for purposes of all Georgia Class Counts)
18 incorporates by reference all preceding allegations as though fully set forth herein.

19 559. Plaintiff brings this claim on behalf of the Georgia Class.

20 560. The Georgia Fair Business Practices Act ("Georgia FBPA") declares
21 "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and
22 consumer acts or practices in trade or commerce" to be unlawful, Ga. Code Ann. § 101-
23 393(b), including, but not limited to, "representing that goods or services have
24 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they
25 do not have," "[r]epresenting that goods or services are of a particular standard, quality,
26 or grade ... if they are of another," and "[a]dvertising goods or services with intent not
27 to sell them as advertised," Ga. Code Ann. § 10-1-393(b).
28

561. Plaintiff and Georgia Class members are “consumers” within the meaning of Ga. Code Ann. § 10-1-393(b).

562. Defendant Hyundai engaged in “trade or commerce” within the meaning of Ga. Code Ann. § 10-1-393(b).

563. Defendant Hyundai violated the Georgia FBPA by concealing and failing to disclose the security Defect. Defendant Hyundai had an ongoing duty to Plaintiff and the Georgia Class to refrain from unfair and deceptive practices under the Georgia FBPA in the course of its business.

564. Plaintiff and the Georgia Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendant Hyundai's concealments and/or failure to disclose material information.

565. Plaintiff and Class members are entitled to recover damages and exemplary damages (for intentional violations) per Ga. Code Ann. § 10-1-399(a). On November 14, 2022, Plaintiff provided Defendant Hyundai with a written demand for relief pursuant to Ga. Code Ann. § 10-1-399(b).

566. Plaintiff also seeks an order enjoining Defendant from unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Georgia FBPA per Ga. Code Ann. § 10-1-399.

COUNT XIX
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(GA. CODE. ANN. §§ 11-2-314 AND 11-2A-212)

567. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

568. Plaintiff brings this claim on behalf of the Georgia Class.

569. Defendant Hyundai was at all relevant times a “merchant” with respect to motor vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and a “seller” of motor vehicles under § 11-2-103(1)(d).

1 570. The Vehicles are and were at all relevant times “goods” within the meaning
2 of Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).

3 571. A warranty that the Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to Ga. Code
5 Ann. §§ 11-2-314 and 11-2A-212.

6 572. The Vehicles, when sold and at all times thereafter, were not in
7 merchantable condition and are not fit for the ordinary purpose for which cars are used.
8 Specifically, the Vehicles contain a security Defect that renders them unsafe,
9 inconvenient, and imperfect such that Plaintiff and Class members would not have
10 purchased the Vehicles had they known of the Defect.

11 573. Defendant Hyundai knew about the security Defect at the time of purchase,
12 allowing it to cure its breach of warranty if it chose.

13 574. Defendant Hyundai was provided notice of the Defect by, among other
14 things, numerous complaints about it, including the instant Complaint, and by customer
15 complaints, letters, emails and other communications from Georgia Class members and
16 from dealers and other repair facilities.

17 575. As a direct and proximate result of Defendant Hyundai’s breach of the
18 implied warranty of merchantability, Plaintiff and the other Georgia Class members
19 have been damaged in an amount to be proven at trial, including but not limited to,
20 benefit-of-the-bargain damages, restitution, and/or diminution of value.

21 **G. Claims Brought on Behalf of the Illinois Class**

22 **COUNT XX**
23 **VIOLATION OF THE ILLINOIS CONSUMER FRAUD**
24 **AND DECEPTIVE BUSINESS PRACTICES ACT**
(815 ILCS 505/1, ET SEQ. AND 720 ILCS 295/1A)

25 576. Plaintiffs Duffin, Glennon, Beckwith, Latimer, Wilson, and Hardwell
26 (“Plaintiffs” for purposes of all Illinois Class Counts) incorporate by reference the
27 allegations contained in the preceding paragraphs of this complaint.

28 577. Plaintiffs bring this claim on behalf of the Illinois Class.

578. The Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFA”) prohibits “unfair or deceptive acts or practices, including, but not limited to, the use of employment of any deception, fraud, false pretense, tales promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of trade or commerce . . . whether any person has in fact been misled, deceived, or damaged thereby.” 815 ILCS 505/2.

579. Defendants are “persons” as that term is defined in 815 ILCS 505/1(c).

580. Plaintiffs and Class members are “consumers” as that term is defined in 815 ILCS 505/1(e).

581. Defendants violated the Illinois CFA by concealing and failing to disclose the Defect. Defendants had an ongoing duty to Plaintiffs and the Illinois Class to refrain from unfair and deceptive practices under the Illinois CFA in the course of its business.

582. Plaintiffs and the Illinois Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' concealment, misrepresentations, and/or failure to disclose material information.

583. Pursuant to 815 ILCS 505/10a(a), Plaintiffs seek monetary relief against Defendants in the amount of actual damages as well as punitive damages because Defendants acted with fraud and/or malice and/or was grossly negligent.

584. Plaintiffs also seek an order enjoining Defendants unfair and/or deceptive acts or practices, attorneys' fees, and any other just and proper relief available under 815 ILCS 505/1, *et seq.*

COUNT XXI
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(810 ILCS §§ 5/2-314 AND 5/2A-212)

585. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

586. Plaintiffs bring this claim on behalf of the Illinois Class.

1 587. Defendants were at all relevant times “merchants” with respect to motor
2 vehicles under 810 ILCS §§ 5/2-104(1) and 5/2A-103(3), and “sellers” of motor
3 vehicles under § 5/2-103(1)(d).

4 588. The Vehicles are and were at all relevant times “goods” within the meaning
5 of 810 ILCS §§ 5/2-105(1) and 5/2A-103(1)(h).

6 589. A warranty that the Vehicles were in merchantable condition and fit for the
7 ordinary purpose for which vehicles are used is implied by law pursuant to 810 ILCS
8 §§ 28-2-314 and 28-12-212.

9 590. The Vehicles, when sold and at all times thereafter, were not in
10 merchantable condition and are not fit for the ordinary purpose for which cars are used.
11 Specifically, the Vehicles are defective in that the security Defect rendered them unsafe,
12 inconvenient, and imperfect such that Plaintiffs and the other Illinois Class members
13 would not have purchased the Vehicles had they known of the Defect.

14 591. Defendants knew about the Defect at the time of purchase, allowing them
15 to cure their breach of warranty if they chose.

16 592. Defendants were provided notice of these issues by numerous complaints
17 against them by, among other things, the instant Complaint, and by customer
18 complaints, letters, emails, and other communications from Class members and from
19 dealers and other repair facilities.

20 593. As a direct and proximate result of Defendants’ breach of the implied
21 warranty of merchantability, Plaintiffs and the other Illinois Class members have been
22 damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-
23 bargain damages, restitution, and/or diminution of value.

H. Claims Brought on Behalf of the Indiana Class

**COUNT XXII
VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT
(IND. CODE § 24-5-0.5-3)**

594. Plaintiffs Fisher, Roberts, and Douglas (“Plaintiffs,” for purposes of all Indiana Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

595. Plaintiffs bring this claim on behalf of the Indiana Class.

596. Defendant Kia is a “person” within the meaning of Ind. Code § 24-5-0.5-2(2).

597. The Indiana Class members’ acquisitions of the Vehicles are “consumer transactions” within the meaning of Ind. Code § 24-5-.05-2(a)(1).

598. Indiana’s Deceptive Consumer Sales Act (“Indiana DCSA”) prohibits a person or supplier from engaging in “an unfair, abusive or deceptive act, or omission, or practice in connection with a consumer transaction.” “Deceptive acts” include: “(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have; (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not: . . . (c) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such a representation thereon or therein, or who authored such materials, and such suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.” Ind. Code § 24-5-0.5-3.

599. Defendant Kia participated in unfair and deceptive trade practices that violated the Indiana DCSA as described herein. Defendant Kia violated the Indiana

1 DCSA by misrepresenting and concealing and failing to disclose the security Defect.
2 Defendant Kia had an ongoing duty to Plaintiffs and the Indiana Class to refrain from
3 unfair and deceptive practices under the Indiana DCSA in the course of its business.

4 600. Defendant Kia's unfair or deceptive acts or practices, including the above-
5 mentioned concealments, omissions, and suppressions of material facts, had a tendency
6 or capacity to mislead and create a false impression in consumers and were likely to and
7 did in fact deceive reasonable consumers, including the Indiana Class members.

8 601. As alleged above, in the course of its business, Defendant Kia intentionally
9 and knowingly misrepresented material facts regarding the Vehicles' safety and
10 reliability with an intent to mislead the Indiana Class members.

11 602. Defendant Kia knew or should have known that its conduct violated the
12 Indiana DCSA.

13 603. To protect its profits, Defendant Kia concealed the security Defect and
14 continued to allow unsuspecting new and used vehicle purchasers to continue to buy,
15 lease, and drive the inherently defective Vehicles.

16 604. Defendant Kia owed the Indiana Class members a duty to disclose the truth
17 about the quality, reliability, durability, and safety of the Class Vehicles because
18 Defendant:

- 19 a. Possessed exclusive knowledge of the Defect in the Class Vehicles;
- 20 b. Intentionally concealed the foregoing from the Indiana Class
- 21 members; and/or
- 22 c. Made incomplete representations about the quality, reliability,
- 23 durability, and safety of the Vehicles, while purposefully
- 24 withholding material facts from the Indiana Class members that
- 25 contradicted these representations

26 605. Because Defendant Kia fraudulently concealed the security Defect in the
27 Vehicles, and intentionally failed to disclose it to the Indiana Class members at the time
28

1 of purchase or lease, the Vehicles are worth significantly less than the amounts paid by
2 the Indiana Class members at the time of purchase or lease. Indeed, consumers who
3 purchased or leased the Class Vehicles would not have purchased or leased the Vehicles,
4 or would have paid significantly less for them, had they known of the existence of this
5 defect prior to purchase or lease.

6 606. The Indiana Class members suffered ascertainable loss caused by
7 Defendant Kia's failure to disclose material information. The Indiana Class members
8 did not receive the benefit of their bargains as a result of Defendant Kia's misconduct.

9 607. As a direct and proximate result of Defendant Kia's violations of the
10 Indiana DCSA, the Indiana Class members have suffered injury-in-fact and/or actual
11 damages.

12 608. Pursuant to Ind. Code § 24-5-0.5-4, the Indiana Class members are entitled
13 to monetary relief from Defendant Kia measured as the greater of (a) actual
14 damages in an amount to be determined at trial, and (b) statutory damages in the amount
15 of \$500 for each Indiana Class Member, including treble damages up to \$1,000 for
16 Defendant Kia's willfully deceptive acts.

17 609. The Indiana Class members also seek punitive damages based on the
18 outrageousness and recklessness of Defendant Kia's conduct and Defendant Kia's high
19 net worth.

20 610. In accordance with Ind. Code § 24-5-0.5-5(a), Plaintiffs' counsel, on behalf
21 of Plaintiffs, sent a letter to Defendant Kia with notice of their allegations
22 regarding Defendant Kia's violations of the Indiana DCSA relating to the Class Vehicles
23 and the Indiana Class members' demand that Defendant Kia correct or agree to correct
24 the actions described therein. Defendant Kia has failed to do so. Plaintiffs therefore seek
25 compensatory and monetary damages to which Plaintiffs and Indiana Class members
26 are entitled.

COUNT XXIII
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(IND. CODE § 26-1-2-314)

611. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

612. Plaintiffs bring this claim on behalf of the Indiana Class.

613. Defendant Kia is a merchant with respect to motor vehicles.

614. A warranty that the Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs and Indiana Class members purchased or leased their Vehicles from Defendant Kia.

615. The Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Vehicles contain a security Defect that renders them unsafe, inconvenient, and imperfect such that Plaintiffs and Class members would not have purchased the Vehicles had they known of the Defect.

616. Defendant Kia knew about the Defect at the time of purchase, allowing it to cure its breach of warranty if they chose.

617. Defendant Kia was provided notice of the Defect by, among other things, numerous complaints about it, including the instant Complaint, and by customer complaints, letters, emails and other communications from Indiana Class members and from dealers and other repair facilities.

618. As a direct and proximate result of Defendant Kia's breach of the implied warranty of merchantability, Plaintiffs and the other Indiana Class members have been damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or diminution of value.

I. Claims Brought on Behalf of the Kentucky Class

**COUNT XXIV
VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT
(KY. REV. STAT. § 367.110, *ET SEQ.*)**

619. Plaintiff Weinfurter (“Plaintiff,” for purposes of all Kentucky Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

620. Plaintiff brings this claim on behalf of the Kentucky Class.

621. Defendant Kia and Plaintiff are “persons” within the meaning of the Ky. Rev. Stat. § 367.110(1).

622. Defendant Kia engaged in “trade” or “commerce” within the meaning of Ky. Rev. Stat. § 367.110(2).

623. The Kentucky Consumer Protection Act (“Kentucky CPA”) makes unlawful “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce” Ky. Rev. Stat. § 367.170(1). Defendant Kia participated in misleading, false, or deceptive acts that violated the Kentucky CPA. By systematically concealing the Defect in the Vehicles, Defendant Kia engaged in deceptive business practices prohibited by the Kentucky CPA. The security Defect would be material to a reasonable consumer.

624. Defendant Kia’s actions, as set forth above, occurred in the conduct of trade or commerce.

625. In the course of its business, Defendant Kia systematically concealed the Defect in the Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendant Kia also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Vehicles.

1 626. Defendant Kia knew that the Vehicles were defectively manufactured, and
2 were not suitable for their intended use. Defendant Kia was previously provided notice
3 of the defects in the Vehicles by, among other things, numerous customer complaints,
4 letters, emails, and other communications from Class members and from dealers and
5 other repair facilities. Defendant Kia nevertheless failed to warn Plaintiff about the
6 Defect despite having a duty to do so.

7 627. By failing to disclose and by actively concealing the Defect in Plaintiff's
8 Vehicle, which it marketed as safe, reliable, and of high quality, Defendant Kia engaged
9 in unfair and deceptive business practices in violation of the Kentucky CPA.

10 628. In the course of Defendant Kia's business, it willfully failed to disclose and
11 actively concealed the dangerous risk posed by the Defect in the Vehicles.

12 629. Defendant Kia's unfair or deceptive acts or practices were likely to and did
13 in fact deceive reasonable consumers, including Plaintiff, about the true safety and
14 reliability of its Vehicles.

15 630. Defendant Kia intentionally and knowingly omitted material facts
16 regarding the Vehicles with the intent to mislead Plaintiff.

17 631. Defendant Kia knew or should have known that its conduct violated the
18 Kentucky CPA.

19 632. Defendant Kia owed Plaintiff a duty to disclose the true safety and
20 reliability of the Vehicles because Defendant Kia:

- 21 a. Possessed exclusive knowledge about the Defect in the Vehicles;
- 22 b. Intentionally concealed the foregoing from Plaintiff; and/or
- 23 c. Made incomplete representations about the safety and reliability of
- 24 the Vehicles.

25 633. Because Defendant Kia fraudulently concealed the Defect in the Vehicles,
26 Vehicle owners were deprived of the benefit of their bargain since the Vehicles they
27 purchased were worth less than they would have been if they were free from defects.
28

1 Had Vehicle owners been aware of the defects in their vehicles, they would have either
2 not have bought their Vehicles or would have paid less for them.

3 634. Vehicle owners were harmed by Defendant Kia's unfair and deceptive
4 trade practices since their Vehicles were worth less as the result of Defendant Kia's
5 concealment of, and failure to remedy, the Defect. This diminished value is directly
6 attributed to Defendant Kia's dishonesty and omissions with respect to the quality and
7 safety of the Vehicles.

8 635. Defendant Kia's concealment of the Defect in Plaintiff's Vehicle was
9 material to Plaintiff.

10 636. Plaintiff suffered ascertainable loss caused by Defendant Kia's omissions
11 and its concealment of and failure to disclose the Defect in the Vehicles.

12 637. Defendant Kia's violations present a continuing risk to Plaintiff as well as
13 to the general public. Defendant's unlawful acts and practices complained of herein
14 affect the public interest.

15 638. As a direct and proximate result of Defendant Kia's violations of the
16 Kentucky CPA, Plaintiff has suffered injury-in-fact and/or actual damage as alleged
17 above.

18 639. Pursuant to Ky. Rev. Stat. Ann. § 367.220, Plaintiff seeks to recover actual
19 damages in an amount to be determined at trial; an order enjoining Defendant Kia's
20 unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any
21 other just and proper relief available under Ky. Rev. Stat. Ann. § 367.220.

22 **COUNT XXV**
23 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
(KY. REV. STAT. § 355.2-314)

24 640. Plaintiff incorporates by reference all preceding allegations as though fully
25 set forth herein.

26 641. Plaintiff brings this claim on behalf of the Kentucky Class.
27
28

1 642. Defendant Kia was at all relevant times a “merchant” with respect to motor
2 vehicles under Ky. Rev. Stat. § 355.2-104.

3 643. The Vehicles are and were at all relevant times “goods” within the meaning
4 of Ky. Rev. Stat. § 355.2-105.

5 644. A warranty that the Vehicles were in merchantable condition and fit for the
6 ordinary purpose for which vehicles are used is implied by law pursuant to Ky. Rev.
7 Stat. § 355.2-314.

8 645. These Vehicles, when sold and at all times thereafter, were not in
9 merchantable condition and are not fit for the ordinary purpose for which cars are used.
10 Specifically, the Vehicles contain a security Defect that renders them unsafe, unreliable,
11 and imperfect such that Plaintiff and Class members would not have purchased the
12 Vehicles had they known of the Defect.

13 646. Defendant Kia knew about the Defect at the time of purchase, allowing it
14 to cure its breach of warranty if it chose.

15 647. Defendant Kia was provided notice of the Defect by, among other things,
16 numerous complaints about it, including the instant Complaint, and by customer
17 complaints, letters, emails, and other communications from Class members and from
18 dealers and other repair facilities.

19 648. As a direct and proximate result of Defendant Kia’s breach of the implied
20 warranty of merchantability, Plaintiff and the other Kentucky Class members have been
21 damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-
22 bargain damages, restitution, and/or diminution of value.

J. Claims Brought on Behalf of the Maryland Class

**COUNT XXVI
VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT
(MD. CODE, COM. LAW § 13-101, ET SEQ.)**

649. Plaintiffs O'Connor and Kesner ("Plaintiffs," for purposes of all Maryland Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

650. This claim is brought on behalf of the Maryland Class.

651. Defendant Kia and Plaintiffs are "persons" within the meaning of Md. Code, Com. Law § 13-101(h).

652. The Maryland Consumer Protection Act ("Maryland CPA") provides that a person may not engage in any unfair or deceptive trade practice in the sale or lease of any consumer good. Md. Code, Com. Law § 13-303. Defendant Kia participated in misleading, false, or deceptive acts that violated the Maryland CPA. By systematically concealing the Defect in the Vehicles, Defendant Kia engaged in deceptive business practices prohibited by the Maryland CPA. The Defect would be material to a reasonable consumer.

653. Defendant Kia's actions, as set forth above, occurred in the conduct of trade or commerce.

654. In the course of its business, Defendant Kia concealed the Defect in Plaintiff's vehicle as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendant Kia also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Vehicles.

655. Defendant Kia knew that the Vehicles were defectively manufactured and were not suitable for their intended use. Defendant Kia was previously provided notice of the security Defect in the Vehicles by numerous customer complaints, letters, emails,

1 and other communications from Class members and from dealers and other repair
2 facilities. Defendant Kia nevertheless failed to warn Plaintiff about the Defect despite
3 having a duty to do so.

4 656. By failing to disclose and by actively concealing the Defect in Plaintiffs'
5 Vehicles, which it marketed as safe, reliable, and of high quality, Defendant Kia
6 engaged in unfair and deceptive business practices in violation of the Maryland CPA.

7 657. In the course of Defendant Kia's business, it willfully failed to disclose and
8 actively concealed the dangerous risk posed by the Defect in Plaintiffs' Vehicles.

9 658. Defendant Kia's unfair or deceptive acts or practices were likely to and did
10 in fact deceive reasonable consumers, including Plaintiffs, about the true safety and
11 reliability of their Vehicles.

12 659. Defendant Kia intentionally and knowingly omitted material facts
13 regarding the Class Vehicles with the intent to mislead Plaintiffs.

14 660. Defendant Kia knew or should have known that its conduct violated the
15 Maryland CPA.

16 661. As alleged above, Defendant Kia made material statements about the safety
17 and reliability of the Class Vehicles and the Defendant Kia's brand that were either false
18 or misleading.

19 662. Defendant Kia owed Plaintiffs a duty to disclose the true safety and
20 reliability of the Class Vehicles because Defendant Kia:

- 21 a. Possessed exclusive knowledge about the Defect in the Class
- 22 Vehicles;
- 23 b. Intentionally concealed the foregoing from Plaintiff; and/or
- 24 c. Made incomplete representations about the safety and reliability of
- 25 the Class Vehicles.

26 663. Because Defendant Kia fraudulently concealed the Defect in the Vehicles,
27 Vehicle owners were deprived of the benefit of their bargain since the Vehicles they
28

1 purchased were worth less than they would have been if they were free from the Defect.
2 Had Vehicle owners been aware of the Defect in their Vehicles, they would have either
3 not have bought their Vehicles or would have paid less for them.

4 664. Vehicle owners were also harmed by Defendant Kia's unfair and deceptive
5 trade practices since their Vehicles were worth less as the result of Defendant Kia's
6 concealment of, and failure to remedy, the Defect. This diminished value is directly
7 attributed to Defendant Kia's dishonesty and omissions with respect to the quality and
8 safety of the Vehicles.

9 665. Defendant Kia's concealment of the Defect in Plaintiffs' vehicles was
10 material to Plaintiffs.

11 666. Plaintiffs suffered ascertainable loss caused by Defendant Kia's omissions
12 and its concealment of and failure to disclose the Defect in the Vehicles.

13 667. As a direct and proximate result of Defendant Kia's violations of the
14 Maryland CPA, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged
15 above.

16 668. Pursuant to Md. Code, Com. Law § 13-408, Plaintiffs seek actual damages,
17 attorneys' fees, and any other just and proper relief available under the Maryland CPA.

18 **COUNT XXVII**
19 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
20 **(MD. CODE, COM. LAW § 2-314)**

21 669. Plaintiffs incorporate by reference all preceding allegations as though fully
22 set forth herein.

23 670. This claim is brought on behalf of the Maryland Class.

24 671. Defendant Kia was a merchant with respect to motor vehicles within the
25 meaning of Md. Code, Com. Law § 2-104(1).

26 672. Under Md. Code, Com. Law § 2-314, a warranty that the Vehicles were in
27 merchantable condition was implied by law in the transactions when Plaintiffs
28 purchased or leased their Vehicles from Defendant Kia.

673. The Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Vehicles are inherently defective in that a security Defect renders them unsafe and unreliable.

674. Defendant Kia was provided notice of these issues by numerous complaints against it, including the instant Complaint, and by customer complaints, letters, emails, and other communications from Class members and from dealers and other repair facilities.

675. As a direct and proximate result of Defendant Kia's breach of the warranties of merchantability, Plaintiffs and the other Maryland Class members have been damaged in an amount to be proven at trial.

K. Claims Brought on Behalf of the Massachusetts Class

**COUNT XXVIII
VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECT ACT
(MASS. GEN. LAWS CH. 93A)**

676. Plaintiff Devonish ("Plaintiff," for purposes of all Massachusetts Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

677. Plaintiff brings this claim on behalf of the Massachusetts Class.

678. The conduct of Defendant Kia as set forth herein constitutes unfair and deceptive acts or practices in violation of the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A, including but not limited to Defendant Kia's manufacture, and sale of the Vehicles with the security Defect, which Defendant Kia failed to adequately disclose, and remedy, and its omissions regarding the safety, reliability, and functionality of its Vehicles, which omissions possessed the tendency to deceive.

679. Defendant Kia engages in the conduct of trade or commerce and the misconduct alleged herein occurred in trade or commerce.

680. Therefore, Plaintiff seeks monetary and equitable relief under the

1 Massachusetts Consumer Protection Act as a result of Defendant Kia's unfair and
2 deceptive acts and practices. On November 14, 2022, and pursuant to Mass. Gen. Laws
3 ch. 93A, § 9(3), Plaintiff sent notice and demand to Defendant Kia of its violations of
4 the Massachusetts Consumer Protection Act.

5 **COUNT XXIX**
6 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
7 **(MASS. GEN. LAWS CH. 106, § 2-314)**

8 681. Plaintiff incorporates by reference all preceding allegations as though fully
9 set forth herein.

10 682. Plaintiff brings this claim on behalf of the Massachusetts Class.

11 683. Defendant Kia is and was at all relevant times a merchant with respect to
12 motor vehicles.

13 684. A warranty that the Vehicles were in merchantable condition is implied by
14 law in the instant transactions.

15 685. These Vehicles, when sold and at all times thereafter, were not in
16 merchantable condition and are not fit for the ordinary purpose for which cars are used.
17 Specifically, the Vehicles contain a security Defect that renders them unsafe and
18 unreliable.

19 686. Defendant Kia was provided notice of these issues by numerous complaints
20 against it, including the instant Complaint, and by customer complaints, letters, emails,
21 and other communications from Class members and from dealers and other repair
22 facilities.

23 687. As a direct and proximate result of Defendant Kia's breach of the
24 warranties of merchantability, Plaintiff and the other Massachusetts Class members
25 have been damaged in an amount to be proven at trial.

L. Claims Brought on Behalf of the Michigan Class

**COUNT XXX
VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT
(MICH. COMP. LAWS § 445.901 *ET SEQ.*)**

688. Plaintiff Catlos (“Plaintiff,” for purposes of all Michigan Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

689. Plaintiff brings this claim on behalf of the Michigan Class.

690. Defendant Kia’s business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Michigan Consumer Protection Act (“MCPA”).

691. At all relevant times, Plaintiff and all members of the Michigan Class were “persons” within the meaning of the MCPA, Mich. Comp. Laws § 445.902(1)(d).

692. At all relevant times hereto, Defendant Kia was a “person” engaged in “trade or commerce” within the meaning of the MCPA, Mich. Comp. Laws § 445.902(1)(d) and (g).

693. Defendant Kia’s practices, as described throughout this Complaint, violate the MCPA for, inter alia, one or more of the following reasons:

a. Defendant Kia represented that goods or services have sponsorship, approval, characteristics, uses, and benefits that they do not have;

b. Defendant Kia provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data, and other information to consumers regarding the performance, reliability, quality and nature of the Vehicles;

c. Defendant Kia represented that goods or services were of a particular standard, quality, or grade, when they were of another;

d. Defendant Kia engaged in unconscionable commercial practices in failing to reveal material facts and information about the Vehicles, which did, or tended

1 to, mislead Plaintiff and the Michigan Class about facts that could not reasonably be
2 known by them;

3 e. Defendant Kia failed to reveal facts that were material to the
4 transactions in light of representations of fact made in a positive manner;

5 f. Defendant Kia caused Plaintiff and the Michigan Class to suffer a
6 probability of confusion and a misunderstanding of legal rights, obligations and/or
7 remedies by and through its conduct;

8 g. Defendant Kia failed to reveal material facts to Plaintiff and the
9 Michigan Class, the omission of which would tend to mislead or deceive consumers,
10 including Plaintiff and the Michigan Class; and

11 h. Defendant Kia made material representations and statements of fact
12 to Plaintiff and the Michigan Class that resulted in Plaintiff and the Michigan Class
13 reasonably believing the represented or suggested state of affairs to be other than what
14 they actually were.

15 694. Defendant Kia intended that Plaintiff and the other members of the
16 Michigan Class rely on its misrepresentations and omissions, so that Michigan Plaintiffs
17 and other Michigan Class members would purchase the Vehicles.

18 695. Under all of these circumstances, Defendant Kia's conduct in employing
19 these unfair and deceptive trade practices was malicious, willful, wanton and
20 outrageous, such as to shock the conscience of the community and warrant the
21 imposition of punitive damages.

22 696. The foregoing acts, omissions and practices proximately caused Plaintiff
23 and other members of the Michigan Class to suffer actual damages in the form of, inter
24 alia, diminution in value of the Vehicles, and Plaintiff and the Michigan Class are
25 entitled to recover such damages, together with appropriate exemplary damages,
26 attorneys' fees, and costs of suit.

COUNT XXXI
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(MICH. COMP. LAWS § 440.2314)

697. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

698. Plaintiff brings this claim on behalf of the Michigan Class.

699. Defendant Kia is and was at all relevant times a merchant with respect to the Vehicles.

700. A warranty that the Vehicles were in merchantable quality and condition is implied by law pursuant to Mich. Comp. Laws § 440.2314.

701. Defendant Kia impliedly warranted that the Vehicles were of good and merchantable condition and quality—fit and safe for their ordinary intended use.

702. The Vehicles were defective at the time they left the possession of Defendant Kia. Defendant Kia knew of the security Defect at the time these transactions occurred. Thus, the Vehicles, when sold and at all times thereafter, were not in merchantable condition or quality and are not fit for their ordinary intended purpose.

703. By virtue of the conduct described herein and throughout this Complaint, Defendant Kia breached the implied warranty of merchantability.

704. Plaintiff and the Michigan Class members have been damaged as a direct and proximate result of Defendant Kia's breach of the implied warranty.

705. Plaintiff and the Michigan Class have performed each and every duty required under the terms of the warranties, except as may have been excused or prevented by the conduct of Defendant Kia or by operation of law in light of Defendant Kia's unconscionable conduct.

706. Defendant Kia received timely notice regarding the problems at issue in this litigation (indeed, Defendant Kia knew of the defects prior to offering the Vehicles for sale or lease) and, notwithstanding such notice, Defendant Kia has failed and refused to offer an effective remedy.

1 707. Defendant Kia has received numerous complaints and other notices from
2 consumers advising it of the Defect associated with the Vehicles.

3 708. Plaintiff has had sufficient dealings with either Defendant Kia or its agents
4 (dealerships) to establish privity of contract. Notwithstanding this, privity is not required
5 in this case because Plaintiff and the Michigan Class members are intended third-party
6 beneficiaries of contracts between Defendant Kia and its dealers; specifically, they are
7 intended beneficiaries of Defendant's implied warranties. The dealers were not intended
8 to be the ultimate consumers of the Vehicles and have no rights under the warranty
9 agreements provided with the Vehicles. The warranty agreements were designed for and
10 intended to benefit the ultimate consumers only.

11 709. As a direct and proximate result of Defendant Kia's breach of warranties,
12 Plaintiff and the Michigan Class were caused to suffer economic damage, including loss
13 attributable to the diminished value of their Vehicles, as well as the monies spent and to
14 be spent to repair and/or replace their Vehicles.

15 **M. Claims Brought on Behalf of the Minnesota Class**

16 **COUNT XXXII**
17 **VIOLATION OF THE MINNESOTA UNIFORM DECEPTIVE TRADE**
18 **PRACTICES ACT**
(MINN. STAT. § 325D.43-48, ET SEQ.)

19 710. Plaintiffs Sutton, Dehler, and Pope ("Plaintiffs," for purposes of all
20 Minnesota Class Counts) hereby incorporate by reference the allegations contained in
21 the preceding paragraphs of this complaint.

22 711. This claim is brought by Plaintiffs on behalf of the Minnesota Class.

23 712. Defendant Kia engaged in—and continues to engage in—conduct that
24 violates the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44, et seq.
25 The violations include the following:

26 a. Defendant Kia violated Minn. Stat. § 325D.44(5) by misrepresenting the
27 characteristics, uses, and benefits of the Vehicles by failing to disclose the security
28 Defect in the Vehicles;

1 b. Defendant Kia violated Minn. Stat. § 325D.44(7) by misrepresenting the
2 standard, quality, or grade of the Vehicles by failing to disclose the security Defect in
3 the Vehicles;

4 c. Defendant Kia violated Minn. Stat. § 325D.44(9) by advertising goods
5 with intent not to sell them as advertised by failing to disclose the security Defect in the
6 Vehicles; and

7 d. Defendant Kia violated Minn. Stat. § 325D.44(13) by creating a
8 likelihood of confusion and/or making misrepresentations regarding the Vehicles by
9 failing to disclose the security Defect in the Vehicles.

10 713. Defendant Kia's deceptive sales practices were carried out in Minnesota
11 and affected Plaintiffs and the Minnesota Class.

12 714. As a direct and proximate result of Defendant Kia's deceptive conduct and
13 violation of Minn. Stat. § 325D.44, et seq., Plaintiffs and the Minnesota Class have
14 sustained and will continue to sustain economic losses and other damages for which
15 they are entitled to compensatory and equitable damages and declaratory relief in an
16 amount to be proven at trial.

17 **COUNT XXXIII**
18 **VIOLATION OF THE MINNESOTA PREVENTION**
19 **OF CONSUMER FRAUD ACT**
20 **(MINN. STAT. § 325F.68, ET SEQ.)**

21 715. Plaintiffs hereby incorporate by reference the allegations contained in the
22 preceding paragraphs of this complaint.

23 716. This claim is brought by Plaintiffs on behalf of the Minnesota Class.

24 717. Defendant Kia violated Minn. Stat. § 325F.69 by its misrepresentation and
25 deceptive practices in the sale of Vehicles, which contain the security Defect that
26 Defendant Kia knew about but failed to disclose.

27 718. Defendant Kia intended that Plaintiffs and the Minnesota Class rely on its
28 silence in their decision regarding whether to purchase or lease and how much to pay to
purchase or lease the Vehicles.

719. The Minnesota Prevention of Consumer Fraud Act applies to Defendant Kia's transactions with Plaintiff and the Minnesota Class because Defendant Kia's deceptive scheme was carried out in Minnesota and affected Plaintiffs and the Minnesota Class.

720. As a direct and proximate result of Defendant Kia's deceptive conduct and violation of Minn. Stat. § 325F.69, Plaintiffs and the Minnesota Class have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief, in an amount to be proven at trial, including diminution of value.

COUNT XXXIV
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(MINN. STAT. § 336.2-314)

721. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

722. Plaintiffs bring this Count on behalf of the Minnesota Class.

723. Defendant Kia is and was at all relevant times a merchant with respect to the Vehicles.

724. A warranty that the Vehicles were in merchantable quality and condition is implied by law pursuant to Minn. Stat. § 336.2-314.

725. Defendant Kia impliedly warranted that the Vehicles were of good and merchantable condition and quality—fit and safe for their ordinary intended use.

726. The Vehicles were defective at the time they left the possession of Defendant Kia. Defendant Kia knew of the security Defect at the time these transactions occurred. Thus, the Vehicles, when sold and at all times thereafter, were not in merchantable condition or quality and are not fit for their ordinary intended purpose.

727. By virtue of the conduct described herein and throughout this Complaint, Defendant Kia breached the implied warranty of merchantability.

1 728. Plaintiffs and the Minnesota Class members have been damaged as a direct
2 and proximate result of Defendant Kia's breach of the implied warranty.

3 729. Plaintiffs and the Minnesota Class have performed each and every duty
4 required under the terms of the warranties, except as may have been excused or
5 prevented by the conduct of Defendant Kia or by operation of law in light of Defendant
6 Kia's unconscionable conduct.

7 730. Defendant Kia received timely notice regarding the problems at issue in
8 this litigation (indeed, Defendant Kia knew of the Defect prior to offering the Vehicles
9 for sale or lease) and, notwithstanding such notice, Defendant Kia has failed and refused
10 to offer an effective remedy.

11 731. Defendant Kia has received numerous complaints and other notices from
12 consumers advising it of the security Defect associated with the Vehicles.

13 732. Plaintiffs have had sufficient dealings with either Defendant Kia or its
14 agents (dealerships) to establish privity of contract. Notwithstanding this, privity is not
15 required in this case because Plaintiffs and the Minnesota Class members are intended
16 third-party beneficiaries of contracts between Defendant Kia and its dealers;
17 specifically, they are intended beneficiaries of Defendant Kia's implied warranties. The
18 dealers were not intended to be the ultimate consumers of the Vehicles and have no
19 rights under the warranty agreements provided with the Vehicles. The warranty
20 agreements were designed for and intended to benefit the ultimate consumers only.

21 733. As a direct and proximate result of Defendant Kia's breach of warranties,
22 Plaintiffs and the Minnesota Class were caused to suffer economic damage, including
23 loss attributable to the diminished value of their Vehicles, as well as the monies spent
24 and to be spent to repair and/or replace their Covered Vehicles.

N. Claims Brought on Behalf of the North Carolina Class

**COUNT XXXV
VIOLATION OF THE NORTH CAROLINA UNFAIR AND
DECEPTIVE TRADE PRACTICES ACT
(N.C. GEN. STAT. §75.1-1)**

734. Plaintiff Roberts (“Plaintiff” for purposes of all North Carolina Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

735. This claim is brought by Plaintiff on behalf of the North Carolina Class.

736. North Carolina’s Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75.1-1 (“UDTPA”) prohibits “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.” Defendant Kia’s business acts and practices alleged herein violate the UDTPA.

737. The purchase or lease of the Vehicles by Plaintiff and the North Carolina Class members as described herein constitute transactions in commerce within the meaning of UDTPA.

738. Defendant Kia violated the UDTPA by concealing and failing to disclose the Defect. Defendant Kia had an ongoing duty to Plaintiff and the North Carolina Class members to refrain from unfair and deceptive practices under the UDTPA in the course of its business.

739. The practices of Defendant Kia violate the UDTPA for, inter alia, one or more of the following reasons: Defendant Kia represented that goods or services have sponsorship, approval, characteristics, uses, and benefits that they do not have; Defendant Kia provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the performance, reliability, safety, quality, and nature of the Vehicles; Defendant Kia represented that goods or services were of a particular standard, quality, or grade, when they were of another; Defendant Kia engaged in unconscionable

1 commercial practices in failing to reveal material facts and information about the
2 Vehicles, which did, or tended to, mislead Plaintiff and the North Carolina Class
3 members about facts that could not reasonably be known by the consumer; Defendant
4 Kia failed to reveal facts that were material to the transactions in light of representations
5 of fact made in a positive manner; Defendant Kia caused Plaintiff and the North
6 Carolina Class members to suffer a probability of confusion and a misunderstanding of
7 legal rights, obligations, and/or remedies by and through its conduct; Defendant Kia
8 failed to reveal material facts to Plaintiff and the North Carolina Class members, the
9 omission of which would tend to mislead or deceive consumers, including Plaintiff and
10 the North Carolina Class members; Defendant Kia made material representations and
11 statements of fact to Plaintiff and the North Carolina Class members that resulted in
12 them reasonably believing the represented or suggested state of affairs to be other than
13 what they actually were; Defendant Kia intended that Plaintiff and the North Carolina
14 Class members rely on their misrepresentations and omissions, so that they would
15 purchase the Vehicles.

16 740. Under all of these circumstances, Defendant Kia's conduct in employing
17 these unfair and deceptive trade practices was malicious, willful, wanton, and
18 outrageous such as to shock the conscience of the community and warrant the imposition
19 of punitive damages.

20 741. The conduct of Defendant Kia was likely to mislead consumers and
21 Defendant Kia intended that Plaintiff and the North Carolina Class members rely on
22 their misrepresentations.

23 742. The conduct of Defendant Kia offends established public policy and is
24 immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

25 743. The foregoing acts, omissions, and practices proximately caused Plaintiff
26 and the North Carolina Class members to suffer an ascertainable loss in the form of,
27 inter alia, overpayment and diminution in value of the Vehicles, and Plaintiff and the
28

1 North Carolina Class members are entitled to recover such damages, together with
2 appropriate exemplary damages, attorneys' fees, and costs of suit.

3 **COUNT XXXVI**
4 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
5 **(N.C. GEN. STAT. § 25-2-314)**

6 744. Plaintiff incorporates by reference all preceding allegations as though
7 fully set forth herein.

8 745. Plaintiff brings this claim on behalf of the North Carolina Class.

9 746. Defendant Kia is a merchant in the sale and lease of the Vehicles to
10 Plaintiff and the North Carolina Class members, pursuant to the N.C. Gen. Stat. § 25-2-
11 314.

12 747. By operation of law, Defendant Kia provided Plaintiff and the North
13 Carolina Class members an implied warranty that the Vehicles are merchantable and fit
14 for the ordinary purposes for which they were sold.

15 748. By the conduct described herein, Defendant Kia failed and refused to
16 conform the Vehicles to the warranties and its conduct has voided any attempt on its
17 part to disclaim liability for its actions.

18 749. The Vehicles were defective at the time they left the possession of
19 Defendant Kia.

20 750. The Vehicles were not of merchantable quality as required under N.C.
21 Gen. Stat. § 25-2-314.

22 751. By virtue of the conduct described herein, Defendant Kia breached the
23 implied warranty of merchantability.

24 752. Plaintiff and the North Carolina Class members have been damaged as a
25 result of Defendant Kia's breach of the implied warranty.

26 753. Plaintiff and the North Carolina Class members have performed each and
27 every duty required of them under the terms of the warranties, except as may have been
28 excused or prevented by the conduct of Defendant Kia or by operation of law in light of

1 Defendant Kia's unconscionable conduct.

2 754. Plaintiff and the North Carolina Class members have provided timely
3 notice to Defendant Kia regarding the problems they experienced with the Vehicles and,
4 notwithstanding such notice, Defendant Kia has failed and refused to offer Plaintiff and
5 the North Carolina Class members an effective remedy.

6 755. In addition, Defendant Kia has received, on information and belief,
7 thousands of complaints and other notices from consumers advising them of the security
8 Defect associated with the Vehicles.

9 756. These Vehicles, when sold and at all times thereafter, were not in
10 merchantable condition and are not fit for the ordinary purpose for which cars are used.
11 Specifically, the Vehicles are defective in that they contain a security Defect rendering
12 them unsafe, inconvenient, and imperfect such that Plaintiff and Class members would
13 not have purchased the Vehicles had they known of the Defect.

14 757. Defendant Kia knew about the Defect at the time of purchase, allowing it
15 to cure its breach of warranty if it chose.

16 758. As a direct and proximate result of Defendant Kia's breach of the implied
17 warranty of merchantability, Plaintiff and the other North Carolina Class members have
18 been damaged in an amount to be proven at trial, including, but not limited to, benefit-
19 of-the-bargain damages, restitution, and/or diminution of value.

20 **O. Claims Brought on Behalf of the Ohio Class**

21 **COUNT XXXVII**
22 **VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**
(OHIO REV. CODE §§ 1345.01, ET SEQ)

23 759 Plaintiffs Cummings and Donahue ("Plaintiffs," for purposes of all Ohio
24 Class Counts) incorporate by reference all preceding allegations as though fully set forth
25 herein.

26 760. Plaintiffs bring this claim on behalf of the Ohio Class.

27 761. Plaintiffs and the other Ohio Class members are "consumers" as defined
28

1 by the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 (“OCSPA”).

2 762. Defendants are “suppliers” as defined by the OCSPA. Plaintiffs’ and the
3 other Ohio Class members’ purchases or leases of Class Vehicles were “consumer
4 transactions” as defined by the OCSPA.

5 763. By failing to disclose and actively concealing the Defect, Defendants
6 engaged in deceptive business practices prohibited by the OCSPA, including engaging
7 in acts or practices which are unfair, misleading, false, or deceptive to the consumer.

8 764. Defendants knew that the Vehicles were defectively manufactured and
9 were not suitable for their intended use. Defendants nevertheless failed to warn
10 Plaintiffs about the Defect despite having a duty to do so.

11 765. Defendants owed Plaintiffs a duty to disclose the Defect, because
12 Defendants:

- 13 i) Possessed exclusive knowledge of the Defect rendering the Class
14 Vehicles more unreliable and less safe than similar vehicles;
- 15 ii) Intentionally concealed the Defect; and/or
- 16 iii) Made incomplete representations about the characteristics and
17 performance of the Vehicles, while purposefully withholding
18 material facts from Plaintiffs that contradicted these representations.

19 766. Defendants’ unfair or deceptive acts or practices were likely to, and did in
20 fact, deceive reasonable consumers, including Plaintiffs, about the true performance and
21 characteristics of the Vehicles.

22 767. The Ohio Attorney General has made available for public inspection prior
23 state court decisions which have held that the acts and omissions of Defendants in this
24 Complaint, including, but not limited to, the failure to honor both implied warranties,
25 the making and distribution of false, deceptive, and/or misleading representations, and
26 the concealment and/or non-disclosure of a dangerous defect, constitute deceptive sales
27
28

1 practices in violation of the OCSA. These cases include, but are not limited to, the
2 following:

- 3 i) *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);
- 4 ii) *State ex rel. Betty D. Montgomery v. Honda Motor Co.* (OPIF
5 #10002123);
- 6 iii) *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.*
7 (OPIF#10002025);
- 8 iv) *Bellinger v. Hewlett-Packard Co.* (OPIF #10002077);
- 9 v) *Borrer v. MarineMax of Ohio*, (OPIF #10002388);
- 10 vi) *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF
11 #10002347);
- 12 vii) *Mark J. Crawford Defendants, et al. v. Joseph Airport Toyota, Inc.* (OPIF
13 #10001586);
- 14 viii) *State ex rel. William J. Brown v. Harold Lyons, et al.* (OPIF
15 #10000304);
- 16 ix) *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);
- 17 x) *Khoury v. Don Lewis* (OPIF #100001995);
- 18 xi) *Mosley v. Performance Mitsubishi aka Automanage* (OPIF
19 #10001326);
- 20 xii) *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF #10001524);;
21 and
- 22 xiii) *Brown v. Spears* (OPIF #10000403);.
- 23 xiv) *State ex rel. Brown v. Bud Fletcher Used Cars, Inc.* (OPIF
24 #10000228)
- 25 xv) *State ex rel. Celebrezze v. Metro Toyota, Inc.* (OPIF #10001194);
26 and
- 27 xvi) *Shellhorn v. Kohler Chrysler-Plymouth, Inc.*, (OPIF #10001309)
- 28

1 768. As a result of its violations of the OCSPA detailed above, Defendants
2 caused actual damage to Plaintiffs and the Ohio Class and, if not stopped, will continue
3 to harm Plaintiffs and the Ohio Class. The Defect has caused the value of Class Vehicles
4 to decrease.

5 769. Plaintiffs and the Class sustained damages as a result of Defendants'
6 unlawful acts and are, therefore, entitled to damages and other relief as provided under
7 the OCSPA.

8 770. Plaintiffs also seek court costs and attorneys' fees as a result of Defendants'
9 violation of the OCSPA as provided in Ohio Rev. Code § 1345.09.

10 **COUNT XXXVIII**
11 **BREACH OF IMPLIED WARRANTY IN TORT**
 (BASED ON OHIO LAW)

12 771. Plaintiffs incorporate by reference all preceding allegations as though fully
13 set forth herein.

14 772. Plaintiffs bring this claim on behalf of the Ohio Class.

15 773. The Class Vehicles contained the Defect, resulting in loss of the Vehicles'
16 crucial safety and reliability functions, as detailed herein more fully.

17 774. The Defect existed at the time these Class Vehicles left the hands of
18 Defendants.

19 775. Based upon the dangerous product defect and its certainty to occur,
20 Defendants failed to meet the expectations of a reasonable consumer. The Class
21 Vehicles failed their ordinary, intended use because the Defect prevents the Vehicles
22 from being safely and reliably used as a reasonable consumer would expect. Moreover,
23 it presents a serious danger to Plaintiffs and the other Class members that cannot be
24 eliminated without significant cost.

25 776. The Defect in these Class Vehicles was the direct and proximate cause of
26 economic damages to Plaintiffs and the Ohio Class.

P. Claims Brought on Behalf of the Pennsylvania Class

**COUNT XXXIX
VIOLATION OF PENNSYLVANIA UNFAIR TRADE
PRACTICES AND CONSUMER PROTECTION LAW
(73 P.S. § 201-1, ET SEQ.)**

777. Plaintiff Eberhardt (“Plaintiff” for purposes of all Pennsylvania Class Counts) hereby incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

778. This claim is brought by Plaintiff on behalf of the Pennsylvania Class.

779. Defendant Kia’s business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (“PUTPCPL”).

780. At all relevant times, Plaintiff and all members of the Pennsylvania Class were “consumers” within the meaning of the PUTPCPL, 73 P.S. § 201-1.

781. Defendant Kia’s conduct, as set forth herein, occurred in the conduct of a sale within the meaning of the PUTPCPL, 73 P.S. § 201-1.

782. The practices of Defendant Kia, described above, violate the PUTPCPL for, inter alia, one or more of the following reasons:

- i. Defendant Kia engaged in unconscionable commercial practices in failing to reveal material facts and information about the Vehicles, which did, or tended to, mislead Plaintiff and the Pennsylvania Class members about facts that could not reasonably be known by the consumer;
- ii. Defendant Kia failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;

- 1 iii. Defendant Kia caused Plaintiff and the Pennsylvania Class members
2 to suffer a probability of confusion and a misunderstanding of legal
3 rights, obligations and/or remedies by and through its conduct;
- 4 iv. Defendant Kia failed to reveal material facts to Plaintiff and the
5 Pennsylvania Class members with the intent that Plaintiff and the
6 Pennsylvania Class members rely upon the omission;
- 7 v. Defendant Kia made material representations and statements of fact
8 to Plaintiff and the Pennsylvania Class that resulted in Plaintiff and
9 the Pennsylvania Class members reasonably believing the
10 represented or suggested state of affairs to be other than what they
11 actually were;
- 12 vi. Defendant Kia intended that Plaintiff and the other members of the
13 Pennsylvania Class rely on their and omissions, so that Plaintiff and
14 other Pennsylvania Class members would purchase the Vehicles;
15 and
- 16 vii. Under all of the circumstances, Defendant Kia's conduct in
17 employing these unfair and deceptive trade practices was malicious,
18 willful, wanton and outrageous such as to shock the conscience of
19 the community and warrant the imposition of punitive damages.

20 783. Defendant Kia's actions impact the public interest because Plaintiff and
21 members of the Pennsylvania Class were injured in exactly the same way as thousands
22 of others purchasing and/or leasing the Vehicles as a result of and pursuant to Defendant
23 Kia's generalized course of deception.

24 784. Had Plaintiff and other members of the Pennsylvania Class known of the
25 defective nature of the Vehicles, they would not have purchased or leased the Vehicles
26 or would have paid less for their them.

27

28

785. The foregoing acts, omissions, and practices proximately caused Plaintiff and other members of the Pennsylvania Class to suffer an ascertainable loss and actual damages in the form of, inter alia, overpaying for their Vehicles that have suffered a diminution in value.

786. Defendant Kia violated the PUTPCPL by concealing and failing to disclose the Defect. Defendant Kia had an ongoing duty to Plaintiff and the Pennsylvania Class to refrain from unfair and deceptive practices under the PUTPCPL in the course of its business.

787. Plaintiff and the Pennsylvania Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendant Kia's concealments, misrepresentations, and/or failure to disclose material information.

788. Defendant Kia is liable to Plaintiff and Pennsylvania Class members for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive relief enjoining Defendant's unfair and deceptive practices, and any other just and proper relief.

COUNT XL
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(PA. U.C.C. § 2314)

789. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

790. Plaintiff brings this Count on behalf of the Pennsylvania Class.

791. Defendant Kia is and was at all relevant times a merchant with respect to the Vehicles.

792. The Vehicles are and were at all relevant times “goods.”

793. A warranty that the Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Pa. U.C.C. § 2314.

1 794. The Vehicles, when sold and at all times thereafter, were not in
2 merchantable condition and are not fit for the ordinary purpose for which cars are used.
3 Specifically, the Vehicles' security Defect renders them unsafe, inconvenient, and
4 imperfect such that Plaintiff and the other Pennsylvania Class members would not have
5 purchased the Vehicles had they known of the defects.

6 795. Defendant Kia knew about the Defect at the time of purchase, allowing it
7 to cure its breach of warranty if it chose.

8 796. Defendant Kia was provided notice of these issues by, among other things,
9 numerous complaints about it, including the instant Complaint, and by customer
10 complaints, letters, emails, and other communications from Class members and from
11 dealers and other repair facilities.

12 797. As a direct and proximate result of Defendant Kia's breach of the implied
13 warranty of merchantability, Plaintiff and the other Pennsylvania Class members have
14 been damaged in an amount to be proven at trial, including, but not limited to, benefit-
15 of-the-bargain damages, restitution, and/or diminution of value.

16 **Q. Claims Brought on Behalf of the Rhode Island Class**

17 **COUNT XLI**
18 **VIOLATION OF THE RHODE ISLAND UNFAIR TRADE PRACTICES**
19 **AND CONSUMER PROTECTION ACT**
20 **(R.I. GEN. LAWS § 6-13.1, ET SEQ.)**

21 798. Plaintiff Jacobs ("Plaintiff" for purposes of all Rhode Island Class Counts)
22 incorporates by reference the allegations contained in the preceding paragraphs of this
23 complaint.

24 799. Plaintiff brings this claim on behalf of the Rhode Island Class.

25 800. Rhode Island's Unfair Trade Practices and Consumer Protection Act
26 ("Rhode Island CPA") prohibits "unfair or deceptive acts or practices in the conduct of
27 any trade or commerce" including: "(v) Representing that goods or services have
28 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they
do not have"; "(vii) Representing that goods or services are of a particular standard,

1 quality, or grade ..., if they are of another”; “(ix) Advertising goods or services with
 2 intent not to sell them as advertised”; “(xii) Engaging in any other conduct that similarly
 3 creates a likelihood of confusion or of misunderstanding”; “(xiii) Engaging in any act
 4 or practice that is unfair or deceptive to the consumer”; and “(xiv) Using any other
 5 methods, acts or practices which mislead or deceive members of the public in a material
 6 respect.” R.I. Gen. Laws § 6-13.1-1(6).

7 801. Plaintiff is a person who purchased or leased one or more Vehicles
 8 primarily for personal, family, or household purposes within the meaning of R.I. Gen.
 9 Laws § 6-13.1-5.2(a).

10 802. Defendant Hyundai violated the Rhode Island CPA by concealing and
 11 failing to disclose the Defect. Defendant Hyundai had an ongoing duty to Plaintiff and
 12 the Rhode Island Class to refrain from unfair and deceptive practices under the Rhode
 13 Island CFA in the course of its business.

14 803. Plaintiff and the Rhode Island Class suffered ascertainable loss and actual
 15 damages as a direct and proximate result of Defendant Hyundai’s concealment,
 16 misrepresentations, and/or failure to disclose material information.

17 804. Plaintiff is entitled to recover the greater of actual damages or \$200
 18 pursuant to R.I. Gen. Laws § 6-13.1-5.2(a). Plaintiff also seeks punitive damages in the
 19 discretion of the Court because Defendant Hyundai acted with fraud and/or malice
 20 and/or was grossly negligent.

21 **COUNT XLII**
 22 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
(R.I. GEN. LAWS § 6A-2-314)

23 805. Plaintiff incorporates by reference all preceding allegations as though fully
 24 set forth herein.

25 806. Plaintiff brings this claim on behalf of the Rhode Island Class.

26 807. Defendant Hyundai is and was at all relevant times a merchant with respect
 27 to the Vehicles.
 28

1 808. Under Rhode Island law, a warranty that the Vehicles were in merchantable
2 condition and fit for the ordinary purpose for which vehicles are used is implied by law.

3 809. These Vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are used.
5 Specifically, the Vehicles are defective in that the defects in that the Defect rendered
6 them unsafe, inconvenient, and imperfect such that Plaintiff and the other Rhode Island
7 Class members would not have purchased the Vehicles had they known of the Defect.

8 810. Defendant Hyundai knew about the Defect at the time of purchase,
9 allowing it to cure their breach of warranty if it chose.

10 811. Defendant Hyundai was provided notice of these issues by numerous
11 complaints against it, including the instant Complaint, and by customer complaints,
12 letters, emails, and other communications from Class members and from dealers and
13 other repair facilities.

14 812. As a direct and proximate result of Defendant Hyundai's breach of the
15 implied warranty of merchantability, Plaintiff and the other Rhode Island Class
16 members have been damaged in an amount to be proven at trial, including, but not
17 limited to, benefit-of-the-bargain damages, restitution, and/or diminution of value.

18 **R. Claims Brought on Behalf of the Tennessee Class**

19 **COUNT XLIII**
20 **VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT OF 1977**
(TENN. CODE ANN. § 47-18-101, ET SEQ.)

21 813. Plaintiff Helm ("Plaintiff" for purposes of all Tennessee Class Counts)
22 incorporates by reference all preceding allegations as though fully set forth herein.

23 814. This claim is brought by Plaintiff on behalf of the Tennessee Class.

24 815. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits
25 "unfair or deceptive acts or practices affecting the conduct of any trade or commerce."
26 Tenn. Code § 47-18-104.

816. Plaintiff and the Tennessee Class are “natural persons” and “consumers” within the meaning of Tenn. Code § 47-18-104.

817. Defendant Hyundai is engaged in “trade” or “commerce” or “consumer transactions” within the meaning of Tenn. Code § 47-18-103(9).

818. Defendant Hyundai's conduct, as set forth above, occurred in the conduct of trade or commerce.

819. By concealing and failing to disclose the security Defect, Defendant Hyundai violated the Tennessee CPA. Defendant Hyundai had an ongoing duty to Plaintiff and the other Tennessee Class members to refrain from unfair and deceptive practices under the Tennessee CPA in the course of its business.

820. Plaintiff and the other Tennessee Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendant Hyundai's concealments, misrepresentations, and/or failure to disclose material information.

821. Pursuant to Tenn. Code §§ 47-18-109 and 47-18-109(a)(3), Plaintiff and the other Tennessee Class members seek an order enjoining Defendant Hyundai's unfair, unlawful, or deceptive practices, declaratory relief, punitive damages, attorneys' fees, and any other just and proper remedy under the Tennessee CPA.

COUNT XLIV
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(TENN. CODE §§ 47-2-314 AND 47-2A-212)

822. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

823. Plaintiff brings this claim on behalf of the Tennessee Class.

824. Defendant Hyundai was at all relevant times a “merchant” with respect to motor vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and a “seller” of motor vehicles under § 47-2-103(1)(d).

825. The Vehicles are and were at all relevant times “goods” within the meaning of Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h).

1 826. A warranty that the Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Tenn. Code
3 §§ 47-2-314 and 47-2A-212.

4 827. The Vehicles, when sold and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which cars are used.
6 Specifically, the Vehicles are defective in that the security Defect renders them unsafe,
7 unreliable, inconvenient, and imperfect such that Plaintiff and the other Tennessee Class
8 members would not have purchased the Vehicles had they known of the Defect.

9 828. Defendant Hyundai knew about the Defect at the time of purchase,
10 allowing it to cure its breach of warranty if it chose.

11 829. Defendant Hyundai was provided notice of the Defect by numerous
12 complaints about it, including the instant Complaint, and by customer complaints,
13 letters, emails, and other communications from Class members and from dealers and
14 other repair facilities.

15 830. As a direct and proximate result of Defendant Hyundai's breach of the
16 implied warranty of merchantability, Plaintiff and the other Tennessee Class members
17 have been damaged in an amount to be proven at trial, including, but not limited to,
18 benefit-of-the-bargain damages, restitution, and/or diminution of value.

19 **S. Claims Brought on Behalf of the Texas Class**

20 **COUNT XLV**
21 **VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT**
(TEX. BUS. & COM. CODE §§ 17.41, ET SEQ.)

22 831. Plaintiff Catlos ("Plaintiff," for purposes of all Texas Class Counts)
23 incorporates by reference all preceding allegations as though fully set forth herein.

24 832. Plaintiff brings this Count on behalf of the Texas Class.

25 833. Plaintiff and Defendant Kia are each "persons" as defined by Tex. Bus. &
26 Com. Code § 17.45(3). The Class Vehicles are "goods" under Tex. Bus. & Com. Code
27 § 17.45(1). Plaintiff and the other Texas Class members are "consumers" as defined in
28

1 Tex. Bus. & Com. Code § 17.45(4). Defendant Kia has at all relevant times engaged in
2 “trade” and “commerce” as defined in Tex. Bus. & Com. Code § 17.45(6), by
3 advertising, offering for sale, selling, leasing, and/or distributing the Vehicles in Texas,
4 directly or indirectly affecting Texas citizens through that trade and commerce.

5 834. The allegations set forth herein constitute false, misleading, or deceptive
6 trade acts or practices in violation of Texas’s Deceptive Trade Practices-Consumer
7 Protection Act (“DTPA”), Tex. Bus. & Com. Code §§ 17.41, *et seq.*

8 835. By failing to disclose and actively concealing the security Defect in
9 Vehicles, Defendant Kia engaged in deceptive business practices prohibited by the
10 DTPA, including engaging in acts or practices which are unfair, misleading, false, or
11 deceptive to the consumer.

12 836. Defendant Kia knew that the security systems in the Vehicles were
13 defectively manufactured and were not suitable for their intended use. Defendant Kia
14 nevertheless failed to warn Plaintiff about the Defect despite having a duty to do so.

15 837. Defendant Kia owed Plaintiff a duty to disclose the defective nature of the
16 Vehicles, because Defendant Kia:

- 17 i) Possessed exclusive knowledge of the Defect rendering the Class
18 Vehicles less safe and less reliable than similar vehicles;
- 19 ii) Intentionally concealed the Defect associated with the security systems;
20 and/or
- 21 iii) Made incomplete representations about the characteristics and
22 performance of the Vehicles generally, while purposefully withholding
23 material facts from Plaintiff that contradicted these representations.

24 838. Defendant Kia’s unfair or deceptive acts or practices were likely to and did
25 in fact deceive reasonable consumers, including Plaintiff, about the true performance
26 and characteristics of the Vehicles.

1 839. Defendant Kia’s intentional concealment of and failure to disclose the
2 defective nature of the Vehicles to Plaintiff and the other Texas Class members
3 constitutes an “unconscionable action or course of action” under Tex. Bus. & Com.
4 Code § 17.45(5) because, to the detriment of Plaintiff and the other Texas Class
5 members, that conduct took advantage of their lack of knowledge, ability, and
6 experience to a grossly unfair degree. That “unconscionable action or course of action”
7 was a producing cause of the economic damages sustained by Plaintiff and the other
8 Texas Class members.

9 840. Defendant Kia is also liable under Tex. Bus. & Com. Code § 17.50(a)
10 because Defendant Kia’s breach of the implied warranty of merchantability set forth
11 herein was a producing cause of economic damages sustained by Plaintiff and the other
12 Texas Class members.

13 841. As a result of its violations of the DTPA detailed above, Defendant Kia
14 caused actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff.
15 Plaintiff currently owns or leases, or within the class period has owned or leased, a
16 Vehicle that is defective. Defects associated with the Vehicles’ security systems have
17 caused the value of Class Vehicles to decrease.

18 842. All procedural prerequisites, including notice, have been met. The giving
19 of notice to Defendant Kia is rendered impracticable pursuant to Tex. Bus. & Com.
20 Code § 17.505(b) and unnecessary because Defendant Kia has notice of the claims
21 against it through the numerous complaints filed against it. On November 14, 2022,
22 pursuant to Tex. Bus. & Com. Code § 17.505(a), Plaintiff, individually and on behalf of
23 the other Texas Class members, sent Defendant Kia a written notice that advised them
24 in reasonable detail of Plaintiff and the Texas Class members’ specific complaint and
25 the amount of economic damages and expenses, including attorneys’ fees, reasonably
26 incurred to date in asserting the claim against Defendant Kia. On November 14, 2022,
27 pursuant to Tex. Bus. & Com. Code § 17.501, Plaintiff, individually and on behalf of
28

1 the other Texas Class members, sent the Texas Consumer Protection Division a copy of
2 this Complaint.

3 843. Plaintiff and the Texas Class sustained damages as a result of the
4 Defendant Kia's unlawful acts and are, therefore, entitled to damages and other relief as
5 provided under the DTPA.

6 844. Plaintiff and the other Texas Class members should be awarded three times
7 the amount of their economic damages because Defendant Kia intentionally concealed
8 and failed to disclose the defective nature of the Vehicles.

9 **COUNT XLVI**
10 **BREACH OF IMPLIED WARRANTY**
(BASED ON TEXAS LAW)

11 845. Plaintiff incorporates by reference all preceding allegations as though fully
12 set forth herein.

13 846. Plaintiff brings this Count on behalf of the Texas Class.

14 847. Defendant Kia is and was at all relevant times a merchant with respect to
15 motor vehicles under Tex. Bus. & Com. Code § 2.104.

16 848. A warranty that the Vehicles were in merchantable condition was implied
17 by law in the instant transactions, pursuant to Tex. Bus. & Com. Code § 2.314. These
18 Vehicles, when sold and at all times thereafter, were not in merchantable condition and
19 are not fit for the ordinary purpose for which they are used. Specifically, the Class
20 Vehicles are inherently defective in that the security Defect prevents users from
21 enjoying many features of the Vehicles they purchased and/or leased and that they paid
22 for.

23 849. Defendant Kia was provided notice of these issues by numerous complaints
24 against it, including the instant Complaint, and by customer complaints, letters, emails
25 and other communications from Texas Class members and from dealers and other repair
26 facilities.

1 850. As a direct and proximate result of Defendant Kia's breach of the
2 warranties of merchantability, Plaintiff and the Texas Class have been damaged in an
3 amount to be proven at trial.

4 **T. Claims Brought on Behalf of the Wisconsin Class**

5 **COUNT XLVII**
6 **VIOLATION OF WISCONSIN DECEPTIVE TRADE PRACTICES ACT**
7 **(WIS. STAT. § 100.18)**

8 851. Plaintiff Scalise ("Plaintiff" for purposes of all Wisconsin Class Counts)
9 incorporates by reference all preceding allegations as though fully set forth herein.

10 852. This claim is brought by Plaintiff on behalf of the Wisconsin Class.

11 853. Defendant Kia is a "person[s], firm[s], corporation[s] or association[s]"
12 within the meaning of Wis. Stat. § 100.18(1).

13 854. Plaintiff and Wisconsin Class members are members of "the public" within
14 the meaning of Wis. Stat. § 100.18(1).

15 855. The Wisconsin Deceptive Trade Practices Act ("Wisconsin DTPA")
16 prohibits a "representation or statement of fact which is untrue, deceptive or
17 misleading." Wis. Stat. § 100.18(1).

18 856. By concealing and failing to disclose the Defect, Defendant Kia violated
19 the Wisconsin DTPA. Defendant Kia had an ongoing duty to Plaintiff and the other
20 Wisconsin Class members to refrain from unfair and deceptive practices under the
21 Wisconsin DTPA in the course of its business.

22 857. Plaintiff and the other Wisconsin Class members suffered ascertainable
23 loss and actual damages as a direct and proximate result of Defendant Kia's
24 concealments, misrepresentations, and/or failure to disclose material information
25 concerning the Defect.

26 858. Because Defendant Kia's conduct caused injury to Plaintiff's and the
27 Wisconsin Class members' property through violations of the Wisconsin DTPA,
28 Plaintiff and the Class members are entitled to damages and other relief provided for

1 under Wis. Stat. § 100.18(11)(b)(2), punitive damages, an order enjoining Defendant
2 Kia's unfair or deceptive acts and practices, costs of Court, reasonable attorneys' fees,
3 and any other just and proper relief available under the Wisconsin DTPA

4 **COUNT XLVIII**
5 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
6 **(WIS. STAT. § 402.314)**

7 859. Plaintiff incorporates by reference all preceding allegations as though fully
8 set forth herein.

9 860. Plaintiff brings this claim on behalf of the Wisconsin Class.

10 861. Defendant Kia is and was at all relevant times a merchant with respect to
11 motor vehicles.

12 862. A warranty that the Vehicles were in merchantable condition is implied by
13 law in the instant transactions.

14 863. The Vehicles, when sold and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which cars are used.
16 Specifically, the Vehicles contain the Defect rendering the Vehicles unsafe and
17 unreliable, and preventing users from enjoying many of the Vehicles' features that Class
18 members paid for.

19 864. Defendant Kia was provided notice of the Defect by, among other things,
20 numerous complaints about it, including the instant Complaint, and by customer
21 complaints, letters, emails, and other communications from Class members and from
22 dealers and other repair facilities.

23 865. As a direct and proximate result of Defendant Kia's breach of the
24 warranties of merchantability, Plaintiff and the other Wisconsin Class members have
25 been damaged in an amount to be proven at trial.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class
28 members, respectfully request judgment against Defendants as follows:

1 Jeffrey S. Goldenberg (to be admitted pro hac vice)
2 Todd Naylor (to be admitted pro hac vice)
3 **GOLDENBERG SCHNEIDER, LPA**
4 4445 Lake Forest Drive, Suite 490
5 Cincinnati, OH 45249
6 Telephone: (513) 345-8291
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7 Joseph M. Lyon (to be admitted pro hac vice)
8 **THE LYON FIRM, LLC**
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11 *Counsel for Plaintiffs and Class*
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